Copyright offense and defense
Protecting your work and staying out of trouble
Doomsday Edition
Offense
What is copyright?

- Original works of authorship fixed in a tangible medium of expression.”
- NOT the idea itself or the name/brand
- “modicum of creativity”
How do I get copyright?

- Upon expression in a tangible medium.
- Examples
Is that all I have to do?

- Registration required for enforcement.
- Bonus rights for registering before infringement.
- Expensive to register after infringement, and you lose your "bonus" rights.
Enforcement of your rights

- Much easier if you’ve registered your copyright.
- There is help for artists!
- An attorney may help on her own if there are damages to be had.
What does copyright protect?

- The “bundle of rights”
  - Reproduce/copy
  - Make derivative works
  - Publicly perform
  - Publicly display

- Most of the time, copying or creating a derivative work is at issue.
What constitutes making a copy?

- The easy case: someone intentionally copies something else.
- The harder case: actual copying can’t be shown.
- The test: substantial similarity.
- Literal similarity vs. comprehensive non-literal similarity.
What is a “derivative work?”

- A derivative work is a work based upon another work.
- Famous example: the tile case.
- Typically, if there is no derivative work then there is no copying.
How do I avoid problems?

- Is there suitable material in the public domain?
  - Archive.org
  - Check the date!

- Is there a license available?
  - Creative Commons
  - Flickr, etc.
  - Permission!

- Is the use a fair use?
What is “fair use”?

- The biggest exception to infringement, but not as big as commonly thought.
- Allows use of copyrighted works under certain circumstances.
- The test is multi-factor:
  - Purpose and character of use.
  - Nature of copyrighted work.
  - Amount and substantiality of work used.
  - Effect on market.
Examples of fair use

- 2 Live Crew v. Ray Orbison
Examples of fair use

- Dr. Suess and the O.J. Simpson story (Cat NOT in the Hat)
Examples of fair use

- Naked gun movie poster playing on Annie Liebovitz photo of pregnant Demi Moore
Questions?