UCLA Technology Development Group &

University of California Office of the General Counsel

Copyright-related FAQs

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Business Development, Physical Sciences,
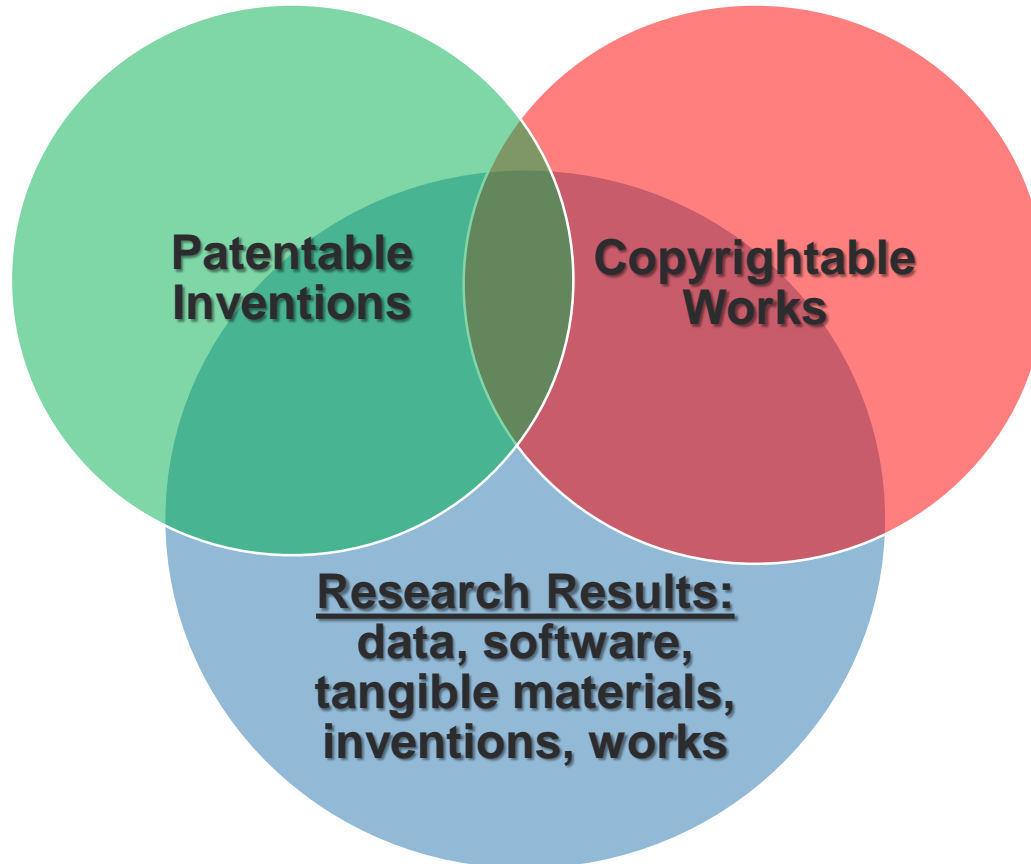Engineering & Medical Devices, UCLA TDG

Topics we will cover:

➢ **Copyright law basics** (ownership, derivative works, fair use)

➢ **Strategies for protecting copyrightable works** (teaching materials)

➢**Data in view of copyright laws**

➢ **Open sourcing copyrightable works**

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Copyright Law Basics

➢ **Applicable UC Policies**

➢ **Ownership**

➢ **Derivative Works**

➢ **Fair Use**

Research results often fall under multiple UC policies

Patentable Inventions

Copyrightable Works

Research Results:
data, software,
tangible materials,
inventions, works

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Who owns the copyright to my work?

- ➢ **U.S. Constitution**

- ➢ **Copyright Act of 1976**

- ➢ **UC Policies:** 1992 Policy on Copyright Ownership (Update coming soon - see draft here)
  - ➢ 2003 Policy on Ownership of Course Materials
  - ➢ 2005 Policy on Use of Recordings of Course Presentations

- ➢ **Contract/Assignment:** Copyright ownership and obligations are often addressed in federal grants, industry sponsored research agreements, foundation agreements, MTAs, etc.

  - ➢ Presumption "work for hire" is owned by employer (absent written agreement to contrary)

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What will change under the updated Copyright Policy?

✓**Expands eligibility to own copyrights**: Expands definition of "Academic Authors".

✓**Expands and clarifies pool of works eligible for copyright ownership**: Provides definition for "Scholarly & Aesthetic Works" and clarifies that software is a work for which eligible employees *may* (depending on certain facts) own the copyright.

✓**Creates a definition for "Significant University Resources" as a limitation on the University's ownership:** The current policy has a broad definition of "University Resources" – revised policy states the level of University resources must be "significant" and beyond the support provided to similarly-situated authors.

✓**Clarifies graduate student copyright ownership:** provides clarity regarding copyright ownership by graduate students of their theses, dissertations, and other copyrightable works.

Determining ownership seems like a headache …
Why should I care – what are the risks?

➢**Clear title is important for commercialization**

  ➢Investors will expect evidence or confirmation of ownership

➢**Plans for future research and development**

➢**Potential revenue share obligations**

➢**UC may owe obligations to third parties**

What rights do I have as a copyright owner?

➢ **Reproduce** (copy) the work

➢ **Distribute** (share with others) the work

➢ **Display** (upload on your website) the work publicly

➢ **Prepare derivatives** (create new versions) based on or incorporating the work

➢ **Perform** the work publicly

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What does "derivative work" mean?

- ➤ Was original work **used, modified, or otherwise changed** to create new work?

  - ➤ Pamphlet or book converted to online content

  - ➤ Course content converted to more sophisticated materials

- ➤ Consider **market-based factors** as **indicators of intent**, e.g., sold as an "improved" or "enhanced" version of the original.

- ➤ **Translations** (e.g., English to Spanish), renditions (interpretation)

- ➤ **© extends only to newly contributed material**

When is software considered a derivative work?

1. **Abstraction, Filtration, Comparison Test (5th, 10th, 11th Cir.):** abstract structural parts, filter all unprotectable portions (ideas, public domain) and compare remaining "kernels of creative expression" to determine whether software products at issue are substantially similar.

2. **Analytic Dissection Test (9th Cir. = CA):** find whether substantial similarities in both the ideas and expressions of the two works and then determine whether those features are protected by copyright and whether "broad" (copyrightable expression) or "thin" (public domain but arranged in copyrightable manner) protection. Thin must be virtually identical, where broad requires "substantial similarity."

3. **No protection for "Methods of Operation" (1st Cir.):** narrower definition of derivative work; software that is method by which the program was operated and controlled is not copyrightable (basically tends to filter out more elements as unprotectable).

Conclusion = control rights to use, create, and own derivative works, and $$ obligations, via contract!

Does my use constitute "Fair Use"?

The four factors judges consider are:

➢ the purpose and character of your use,

➢ the nature of the copyrighted work,

➢ the amount and substantiality of the portion taken, and

➢ the effect of the use upon the potential market.

Other helpful materials (hyperlinks below):

- 2015 Policy on Copyright and Fair Use

- UC webpage on "Fair use for teaching and research"

Strategies for Protecting Copyrightable Works

- ➢ Marking & facilitating use
- ➢ Controlling copying and distribution
- ➢ Infringement actions

What do I have to do to evidence ownership?

➢ **Marking & Registration NOT required to have © protection**

    ➢   BUT it is simple, inexpensive, and provides some advantages

➢ **Symbol, year (first publication), author:**

    ➢ **© 2019-2021 UCLA. All Rights Reserved. For use permissions contact <u>contracts@ucla.edu</u>.**

        ➢ <u>**Mark so potential users can easily contact you!**</u>

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How can I deter copying and control distribution?

Contact Information

Please email any questions, comments, or concerns to:

info@studicata.com

Please note these materials were priced and purchased solely for your personal use and you are prohibited from sharing these materials with others!

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What if I want to enforce my copyright?

➢ **U.S. Copyright Act gives copyright holder choice of**

- © owner's actual damages and any profits of the infringer; or

- Statutory damages ($750 to $30k per copyrighted work infringed).

- Willful infringement can increase damages to $150k/work.

- If registered, liable for reasonable attorney's fees and costs.

➢ **<u>Actual knowledge</u> work was copyrighted <u>not required</u>**

- Marking can preclude "innocent infringement" defense
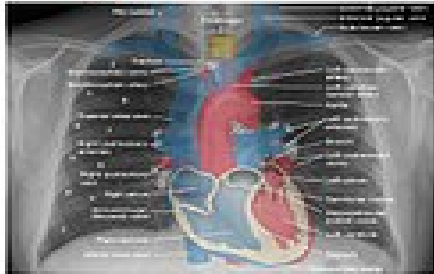
➢ **Must register © before taking action**

Technology
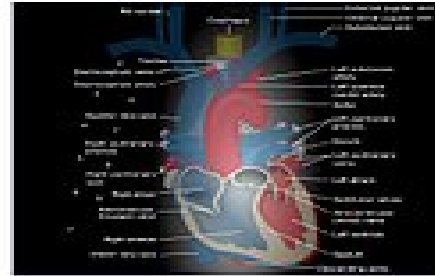Development Group

Is my data or database copyrightable?

➢ **Databases (or "collective works")** are eligible for **limited copyright protection**

  ➢ Data/materials must be selected, coordinated, or arranged in a way that the resulting work as a whole constitutes a new work

  ➢ Copyright extends only to the compilation itself (i.e., the database) and not to the underlying materials or data

➢ **Conclusion = control ownership, use and financial obligations regarding data/database via contract provisions**

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Public Domain…Copyrightable…Derivative Work
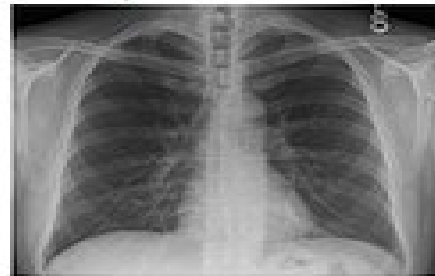

Derivative of medical image: Copyrightable

Additional graphics: Copyrightable

Medical image: Always Public Domain

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Can I open source my work?

A few useful links (hyperlinks embedded below):

➢ **For © works other than software:** consider *Creative Commons Attribution-Noncommercial-ShareAlike 4.0* found **here**

➢ **For UC's guidance on open source software:** see *UC's Open Source Software (OSS) Resource* **here**

➢ **For UCLA TDG's academic/noncommercial distribution options:** see *Licenses for Sharing Software Code Non-commercially on TDG's website* **here**

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UC's Open Source Software (OSS) Resources

Supporting Materials

See next slide

- OSS Chart (pdf)

- OSS Chart Companion (pdf)

- Guide to Managing Open Source Software at UC (pdf)

- Contacts for licensing decisions by Location

- UC Copyright Resources

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UC's OSS Chart found at:

https://security.ucop.edu/files/documents/resources/oss-chart.pdf

OSS Licenses	Internal use (at UC)		External distribution (outside UC)			
	OSS Unmodified	OSS with Bug Fixes or Otherwise Modified	OSS Unmodified	Bug Fixes	OSS Otherwise Modified	OSS function calls only
BSD (Berkeley Software Distribution) *Must retain © notice*	Low Risk	Low Risk	Low Risk	Low Risk	Low Risk	Low Risk
MIT *Must include original © notice*	Low Risk	Low Risk	Low Risk	Low Risk	Low Risk	Low Risk
Apache 1.x (not 2.0 or later) *Must reproduce original © notice*	Low Risk	Low Risk	Low Risk	Low Risk	Low Risk	Low Risk
GPL 1.x / 2.x, or LGPL 2.x (GNU General Public License) – but *not* 3.0 or "any later version" of GPL *H*	Low Risk	Low Risk	Low Risk	Low Risk	Low Risk	Low Risk
Educational Community License v2.0 (ECL-2.0) *PG, H ***	Low Risk	Low Risk	Low Risk	Low Risk	Low Risk	Low Risk
Apache 2.0 *PG, H ***	Low Risk with Internal Use Notice	Low Risk with Internal Use Notice	Low Risk	Low Risk	Moderate Risk	Low Risk
Eclipse Public License 1.0 and 2.0 *PG, H*	Low Risk with Internal Use Notice	Low Risk with Internal Use Notice	Low Risk	Low Risk	Moderate Risk	Low Risk
MPL 2.0 (Mozilla Public License) *PG, H*	Low Risk with Internal Use Notice	Low Risk w/ Bug Fixes ONLY	Low Risk	Low Risk	Moderate Risk	Moderate Risk
Affero General Public License (AGPL) **3.0** *PG, H*	Low Risk with Internal Use Notice	Low Risk with Internal Use Notice	High Risk	High Risk	High Risk	Moderate Risk
GPL 3.0 or LGPL 3.0 (GNU General Public License) *PG, H*	Low Risk with Internal Use Notice	Low Risk with Internal Use Notice	High Risk	High Risk	High Risk	High Risk
Other OSS Licenses	**Contact Licensing Office**					

A few relevant UC/UCLA policies…

➢ **UC's Copyright Policy:** https://copyright.universityofcalifornia.edu/resources/copyright-ownership.html

  ➢ Update coming soon!: https://osc.universityofcalifornia.edu/2019/11/uc-copyright-ownership-policy-systemwide-review/

➢ **2003 Policy on Ownership of Course Materials:** https://copyright.universityofcalifornia.edu/resources/ownership-course-materials.html

➢ **2015 Policy on Copyright and Fair Use:** https://copyright.universityofcalifornia.edu/resources/copyright-fair-use.html

➢ **2005 Policy on Use of Recordings of Course Presentations:** https://copyright.universityofcalifornia.edu/resources/recorded-presentations.html

➢ **UCLA Policy 955 : Net Royalty Distribution of Non-Patented Intellectual Property:** http://www.adminpolicies.ucla.edu/APP/Number/955.0

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