Information About Copyright Homework

This is a 3-part homework. That’s a lot of reading! Do each part thoroughly!
The sources for this homework provide some of the most complete, accurate, and well-organized copyright related information available.

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Part 1: Read the summary ""SOME COPYRIGHT BASICS" " below (pg.1-4).

It is a compilation I have made of the most important basic information from the U.S. Copyright Office concerning the music business. It is dense and has some legal language, so read it slowly and carefully until you truly understand it.

SOME COPYRIGHT BASICS

Here are excerpts from Circulars from the Copyright Office that explain some essential elements about copyright that you need to understand.
The circulars excerpted are Circulars #1 (Copyright Basics), #56 (Sound Recordings) & #40 (Visual Arts).

What is a Copyright?

NOTE: •The first two underlines show wording that was added in 1976. Before that, sound recordings were not protected by federal copyright law.
•The sixth right listed, also underlined, granting sound recordings some performance rights in digital audio transmission, did not exist until 1996. The list of this digital performance right as separate line/6th right has only be added in the last year. Before that it was listed as part of the general performance rights paragraph.

Copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works (see *1 on pg. 2). Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:
• To reproduce the work in copies or phonorecords;
• To prepare derivative works based upon the work;
• To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
• To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audio-visual works;
• To display the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audio-visual work; and
• In the case of sound recordings, to perform the work publicly by means of a digital audio transmission.

In addition, certain authors of works of visual art have the rights of “attribution” and “integrity”. (see *2 on pg. 3)
Sound Recording Copyright
Sound recordings fixed before February 15, 1972, were generally protected by common law or in some cases by statutes enacted in certain states but were not protected by federal copyright law. In 1971 Congress amended the copyright code to provide copyright protection for sound recordings fixed and first published with the statutory copyright notice on or after Feb. 15, 1972. The 1976 Copyright Act, effective January 1, 1978, provides federal copyright protection for unpublished and published sound recordings fixed on or after (2/15/72…

What Is a Sound Recording?
The copyright code of the United States (title 17 of the United States Code) provides for copyright protection in sound recordings. Sound recordings are defined in the law as “works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work.” Common examples include recordings of music, drama, or lectures.

Copyright in a sound recording protects the particular series of sounds “fixed” (embodied in a recording) against unauthorized reproduction and revision, unauthorized distribution of phonorecords containing those sounds, and certain unauthorized performances by means of a digital audio transmission. (NOTE: It does not protect the song/composition, which has it’s own copyright and authors, who may not be the same as those for the sound recording.)


Generally, copyright protection extends to two elements in a sound recording: (1) the contribution of the performer(s) whose performance is captured and (2) the contribution of the person or persons responsible for capturing and processing the sounds to make the final recording.

A sound recording is not the same as a phonorecord. A phonorecord is the physical object in which works of authorship are embodied. Throughout this circular the word “phonorecord” includes cassette tapes, CDs, LPs, vinyl disks, as well as other formats.

(*)1) published and unpublished works

Publication
Publication is no longer the key to obtaining federal copyright as it was under the Copyright Act of 1909. However, publication remains important to copyright owners. The 1976 Copyright Act defines publication as follows: Publication as defined by the 1976 Copyright Act is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display does constitute publication. A public performance or display of a work does not of itself constitute publication (nor does preparing copies, phonorecords, or registering with the Copyright Office).

“To the public” generally means to persons under no explicit or implicit restrictions with respect to disclosure.
Moral Rights for Visual Artists
For certain one-of-a-kind visual art and numbered limited editions of 200 or fewer copies, authors are accorded rights of attribution and integrity. The right of attribution ensures that artists are correctly identified with the works of art they create and that they are not identified with works created by others. The right of integrity allows artists to protect their works against modifications and destructions that are prejudicial to the artists’ honor or reputation. These rights cannot be transferred by the author, but they may be waived in a written instrument. Transfer of the physical copy of a work of visual art or of the copyright does not affect the moral rights accorded to the author.

(Note: This protection does NOT extend to other types of copyrighted material, such as songs or sound recordings. The First Amendment right of free speech usually overrides the arguments for the “moral rights” of an author/creator. We will discuss this further when we talk about sampling.)

Copyright Protection Is Automatic
Under the 1976 Copyright Act, which became effective January 1, 1978, a work is automatically protected by copyright when it is created. A work is created when it is “fixed” (in any tangible medium of expression from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device) such as a copy or phonorecord for the first time. (A work is created when it is “fixed” for the first time.) Neither registration in the Copyright Office nor publication is required for copyright protection under the present law.

Who Can Claim Copyright?
The copyright in the work of authorship immediately becomes the property of the author who created the work. Only the author or those deriving their rights through the author can rightfully claim copyright. The authors of a joint work are co-owners of the copyright in the work, unless there is an agreement to the contrary.

In the case of (a) “work made for hire”, the employer and not the employee is considered to be the author.

Section 101 of the copyright law defines a “work made for hire” as:
1) a work prepared by an employee within the scope of his or her employment; or
2) a work specially ordered or commissioned for use as: a contribution to a collective work; a part of a motion picture or other audiovisual work; a supplementary work; a compilation; (or a situation where) the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

Advantages to Copyright Registration
There are, however, certain advantages to registration, including the establishment of a public record of the copyright claim. Except for certain foreign works, copyright registration must generally be made before an infringement suit may be brought. Timely registration may also provide a broader range of remedies for an infringement of copyright.
Notice of Copyright
Before March 1, 1989, the use of copyright notice was mandatory on all published works, and any work first published before that date should have carried a notice. For works first published on and after March 1, 1989, use of the copyright notice is optional.
Use of the notice may be important because it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication. Furthermore, in the event that a work is infringed, if a proper notice of copyright appears on the published copy or copies to which a defendant in a copyright infringement suit had access, then

(NOTE: the following legalese means that it is harder for a defendant in a case of copyright infringement to use the excuse that they didn’t know)

“no weight shall be given to such a defendant’s interposition of a defense based on innocent infringement in mitigation of actual or statutory damages, except as provided in section 504(c)(2) of the copyright law. Innocent infringement occurs when the infringer did not realize that the work was protected.”

Part 2: THE COPYRIGHT OFFICE Reading Assignments:
(This is the definitive sight for current, accurate and official copyright information.)
• Go to Copyright Office’s website at www.copyright.gov.
• Choose "Copyright Basics", the first topic listed on the left, below “About”, and skim through it. NOTE: If it is listed as “Copyright Basics (en Espanol)” it should be in English despite that. It was the source for much of " Some Copyright Basics", so you can read it in less detail for now, but you DO need to be aware of the topics covered for future reference, so download the pdf.
• Choose "Frequently Asked Questions (FAQ)“, the second topic listed on the left, and read through it. You’ll know some answers already, but it has some helpful additional information, so go through it all, especially the first section: “Copyright in General”.
• Browse through the whole website quickly, so that you know all that it has to offer. It will be a primary source of copyright information for you to use in the future, and always more current than any other source since it is the home of United States Copyright law!

Part 3: BMI.com Answers 25 Questions You Probably Have.: 
BMI has some very helpful information and I will be referring you to specific locations later in the course. For now, go to www.bmi.com/creators/detail/songwriters_and_copyright. It is a very well organized and direct set of 25 questions that will reiterate and clarify some of what you’ve already read and probably answer some questions you still have.

Be sure to visit the websites of ASCAP and similar royalty collection organizations for important additional information about copyright and royalties.