

# Copyright Issues for Computer Programs and Web Sites

Presented by  
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# Computer Program defined as:

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**“a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result”**



# Copyright Extends to

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- **Program Code, including**
  - Programs that establish the format of text and graphics on a computer screen (such as a program written in html)
  - Other programs transmitted or accessed online
  - Source code, object code, flow chart, or words
  - Embodied in paper, magnetic disk, tape or semi-conductor chip

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- **Web site Content**
  - **Automated Databases**
  - **Screen Displays/User Interfaces**



# **NO Protection For:**

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- Ideas, concepts
- Program Logic
- Algorithms
- Systems
- Methods of operation, processes, procedures
- Public Domain material
- De Minimis Menu Screen
- Blank forms



# Copyright Notice:

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1) © or Copyright

2) Year of First publication

3) Owner

© 2010 BABC

Copyright 2009, 2010 BABC

or

Copyright 2000-10 BABC

# Who Owns the Copyright? Who is the “Author”?

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- **Who created the code?**
  - **Independent software developer** owns it (absent written assignment)
  - **Employee** does not have copyright ownership if developed as part of employment; the **employer** is the “**Author**”
  - Joint “authorship” (and thus joint ownership absent assignment) if developed jointly by two or more “authors”
  - If you “purchase” off-the-shelf program or execute a license, you do not own the copyright





# Publication

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**“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”**

**or**

**Offering to distribute copies to a group of persons for purposes of further distribution**

**Public display ≠ publication**



# To Register or Not to Register

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**Yes, register:**

- Registration can secure benefit of statutory damages, attorney fees in event of infringement
- Can help establish proof of existence of code as of filing
- Registration is prerequisite to infringement lawsuit
- Relatively inexpensive
- Useful to enforce rights when others have access to the source code (e.g., the original software developers or licensees)



# To Register or Not to Register

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**No, do not register:**

- **If source code is used internally only and not made available to licensees, then infringement is unlikely**
- **Deposit requirement: first and last 25 pages of source code must accompany application**



# Scope of Rights

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- **Exclusive Right to**
  - Copy
  - Distribute
  - Perform publicly
  - Prepare derivative works

# Limitation on Exclusive Rights in Computer Programs

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- **Owner of copy may copy or adapt it if:**
  1. The new copy or adaptation is created as an essential step in utilization of the program
  - or
  2. New copy or adaptation is for archival purposes only (and copies are destroyed if right to possess program ends)
- **Owner or lessee of machine may copy program for maintenance or repair of machine**



# Determining Infringement

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- **Abstraction**
- **Filtration**
- **Comparison**



# Infringement Analysis

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- **Abstraction**

- Main purpose
- Program structure or architecture
- Modules
- Algorithms and data structures
- Source code
- Object code



# Infringement Analysis

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## ■ Filtration

- Examine each part for ideas, public domain elements to sift out elements not subject to protection
- Sift out expression constraints such as,
  - Computer's mechanical specs
  - Compatibility requirements of other programs
  - Computer manufacturer's design standards
  - Widely accepted programming practices





# Infringement Analysis

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- **Comparison**

- Compare what's left after filtration with allegedly infringing program



# Computer Screen Displays and Web Sites

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- Original text
- Original graphics, photos, drawings
- Original audiovisual



# Register Web Site or Screen Display?

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- Can register screen display with the program or separately
- Who owns the web site content?
- Is it original?



# Conclusion – Take Away

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- 1. Secure Ownership by assignment of rights**
- 2. Register copyright when warranted by its value and risk of infringement**
- 3. Document revisions, archive previous versions**
- 4. Display copyright notice**



# Conclusion – Take Away

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## 5. Do not rely solely on copyright

### Combine with

- Confidentiality agreement
- Assignment of rights from developer
- Warranties
- Noncompete agreements
- Trade secret (restrict access to source code)
- Trademarks



# Contact

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