



Copyright Exclusive Rights Wrap-Up

Copyright
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Konomark
Most rights sharable

Elements of prima facie case for copyright infringement (for reproduction right)

1. it's a copyrighted work (copyrightable subject matter)
2. that the plaintiff owns

i.e., the plaintiff has standing to sue because they own the copyright—either all of it or the applicable stick in the bundle (e.g., exclusive license for reproduction by DVD/Blu-ray/home-video in the U.S.)

3. actual copying (a/k/a “copying in fact”)

can be proven by:

- indirect evidence (access and probative substantial similarity)
- or, theoretically, direct evidence (e.g., eyewitness, Δ 's admission)

4. **substantial appropriation** (a/k/a “improper appropriation,” “unlawful appropriation,” “wrongful copying,” “copying in law”)

This means enough of the work was taken to amount to infringement.

The test is “substantial similarity,” which might be called *appropriative* substantial similarity for clarity.

Where it applies, de minimis doctrine allows some actual appropriations to escape this element.

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(e.g., circumstantial and probative substantial similarity)

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Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) 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 audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

I own an illicitly made photocopy of a secret, never published manual authored in 2020 by Google describing their proprietary search algorithms. It's 500 pages on 8.5-by-11 paper. I was given the photocopy by a friend. When two friends of mine stop by my house, I show it to them, letting them leaf through it and learn Google's proprietary secrets. Have I infringed any of Google's exclusive rights under copyright?

- A. Yes
- B. No

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A. Yes

B. No ←

I didn't, e.g., effect a reproduction, distribution, public performance, public display, or any other exclusive right.

I own an illicitly made photocopy of a secret, never published manual authored in 2020 by Google describing their proprietary search algorithms. It's 500 pages on 8.5-by-11 paper. I was given the photocopy by a friend. I scan it in as a PDF, put it on a server, and provide a webpage that automatically emails the PDF to anyone who fills in a form on the webpage. Hundreds of such emails have gone out. Have I infringed any of Google's exclusive rights under copyright?

A. Yes

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A. Yes ←

That infringes the reproduction right and the distribution right.

B. No

I wrote a novel by "re-writing" a copyrighted novel written by J.K. Rowling. What I mean by re-writing is that I didn't literally copy the words and sentences. Instead, I expressed every sentence or paragraph with my own wording. I also changed all the character names. In fact, there are no three words in a row that are the same between Rowling's novel and mine. But the characters have the same substantive traits and the plot has the same elements. Have I infringed any of Rowling's exclusive rights under copyright?

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A. Yes ←

This is “non-literal copying,” but it will still count as substantial appropriation (a/k/a “copying in law”).

B. No