

案例教程影印系列
**CASEBOOK
SERIES**

全球信息化经济中的著作权法

COPYRIGHT IN A GLOBAL INFORMATION ECONOMY

朱莉·E·科恩 (Julie E. Cohen)

[美] 莉迪亚·帕拉斯·洛伦 (Lydia Pallas Loren) / 著

鲁恩·甘那·奥克蒂基 (Ruth Gana Okediji)

莫林·A·奥罗克 (Maureen A. O' Rourke)



中 信 出 版 社
CITIC PUBLISHING HOUSE

案例教程影印系列

**CASEBOOK
SERIES**

全球信息化经济中的著作权法

COPYRIGHT IN A GLOBAL INFORMATION ECONOMY

朱莉·E·科恩 (Julie E. Cohen)

[美] 莉迪亚·帕拉斯·洛伦 (Lydia Pallas Loren) / 著

鲁恩·甘那·奥克蒂基 (Ruth Gana Okediji)

莫林·A·奥罗克 (Maureen A. O'Rourke)

中 信 出 版 社
CITIC PUBLISHING HOUSE

图书在版编目(CIP)数据

全球信息化经济中的著作权法(案例教程影印系列)/(美)科恩等著. —影印本. —北京: 中信出版社, 2003.8

书名原文: Copyright in a Global Information Economy

ISBN 7-80073-868-X

I. 全… II. 科… III. 著作权法—研究—美国—英文 IV. D971.23

中国版本图书馆CIP数据核字(2003)第064807号

Copyright © 2002 by Aspen Law & Business

A Division of Aspen Publishers, Inc.

This volume of Copyright in a Global Information Economy, by Julie E. Cohen, Lydia Pallas Loren, Ruth Gana Okediji, and Maureen A. O'Rourke, is an English Reprint Edition meant solely for publication in the country of China, published and sold by CITIC PUBLISHING HOUSE, by permission of ASPEN PUBLISHERS, INC., New York, New York, U.S.A., the owner of all rights to publish and sell same.

本书由中信出版社与Aspen Publishers, Inc.合作出版, 未经出版者书面许可, 本书的任何部分不得以任何方式复制或抄袭。

全球信息化经济中的著作权法

QUANQIU XINXIHUA JINGJIZHONGDE ZHUZUOQUANFA

著 者: [美]朱莉·E·科恩 莉迪亚·帕拉斯·洛伦 鲁恩·甘那·奥克蒂基 莫林·A·奥罗克

责任编辑: 张 芳

出版发行: 中信出版社(北京市朝阳区东外大街亮马河南路14号塔园外交办公大楼 邮编 100600)

经 销 者: 中信联合发行有限公司

承 印 者: 霸州市长虹印刷厂

开 本: 787mm×1092mm 1/16 印 张: 50.5 字 数: 1010千字

版 次: 2003年8月第1版 印 次: 2003年8月第1次印刷

京权图字: 01-2003-2468

书 号: ISBN 7-80073-868-X/D·110

定 价: 128.00元

版权所有·侵权必究

凡购本社图书, 如有缺页、倒页、脱页, 由发行公司负责退换。服务热线: 010-85322521

E-mail:sales@citicpub.com

010-85322522

总 序

吴志攀

加入世界贸易组织表明我国经济发展进入了一个新的发展时代——一个国际化商业时代。商业与法律的人才流动将全球化，评介人才标准将国际化，教育必须与世界发展同步。商业社会早已被马克思描绘成为一架复杂与精巧的机器，维持这架机器运行的是法律。法律不仅仅是关于道德与公理的原则，也不单单是说理论道的公平教义，还是具有可操作性的精细的具体专业技术。像医学专业一样，这些专业知识与经验是从无数的案例实践积累而成的。这些经验与知识体现在法学院的教材里。中信出版社出版的这套美国法学院教材为读者展现了这一点。

教育部早在2001年1月2日下发的《关于加强高等学校本科教学工作提高教学质量的若干意见》中指出：“为适应经济全球化和科技革命的挑战，本科教育要创造条件使用英语等外语进行公共课和专业课教学。对高新技术领域的生物技术、信息技术等专业，以及为适应我国加入WTO后需要的金融、法律等专业，更要先行一步，力争三年内，外语教学课程达到所开课程的5%—10%。暂不具备直接用外语讲授条件的学校、专业，可以对部分课程先实行外语教材、中文授课，分步到位。”

引进优质教育资源，快速传播新课程，学习和借鉴发达国家的成功教学经验，大胆改革现有的教科书模式成为当务之急。

按照我国法学教育发展的要求，中信出版社与外国出版公司合作，瞄准国际法律的高水平，从高端入手，大规模引进畅销外国法学院的外版法律教材，以使法学院学生尽快了解各国的法律制度，尤其是欧美等经济发达国家的法律体系及法律制度，熟悉国际公约与惯例，培养处理国际事务的能力。

此次中信出版社引进的是美国ASPEN出版公司出版的供美国法学院使用的主流法学教材及其配套教学参考书，作者均为富有经验的知名教授，其中不乏国际学术权威或著名诉讼专家，历经数十年课堂教学的锤炼，颇受法学院学生的欢迎，并得到律师实务界的认可。它们包括诉讼法、合同法、公司法、侵权法、宪法、财产法、证券法等诸多法律部门，以系列图书的形式全面介绍了美国法律的基本概况。

这次大规模引进的美国法律教材包括：

伊曼纽尔法律精要 (Emanuel Law Outlines) 美国哈佛、耶鲁等著名大学法学院广泛采用的主流课程教学用书，是快捷了解美国法律的最佳读本。作者均为美国名牌大学权威教授。其特点是：内容精炼，语言深入浅出，独具特色。在前言中作者以其丰富的教学经验制定了切实可行的学习步骤和方法。概要部分提纲挈领，浓缩精华。每章精心设计了简答题供自我检测。对与该法有关的众多考题综合分析，归纳考试要点和难点。

案例与解析 (Examples and Explanations) 由美国最权威、最富有经验的教授所著，这套丛书历

经不断的修改、增订，吸收了最新的资料，经受了美国成熟市场的考验，读者日众。这次推出的是最新版本，在前几版的基础上精益求精，补充了最新的联邦规则，案例也是选用当今人们所密切关注的问题，有很强的时代感。该丛书强调法律在具体案件中的运用，避免了我国教育只灌输法律的理念与规定，而忽视实际解决问题的能力培养。该丛书以简洁生动的语言阐述了美国的基本法律制度，可准确快捷地了解美国法律的精髓。精心选取的案例，详尽到位的解析，使读者读后对同一问题均有清晰的思路，透彻的理解，能举一反三，灵活运用。该丛书匠心独具之处在于文字与图表、图例穿插，有助于理解与记忆。

案例教程系列（Casebook Series）覆盖了美国法学院的主流课程，是学习美国法律的代表性图书，美国著名的哈佛、耶鲁等大学的法学院普遍采用这套教材，在法学专家和学生中拥有极高的声誉。本丛书中所选的均为重要案例，其中很多案例有重要历史意义。书中摘录案例的重点部分，包括事实、法官的推理、作出判决的依据。不仅使读者快速掌握案例要点，而且省去繁琐的检索和查阅原案例的时间。书中还收录有成文法和相关资料，对国内不具备查阅美国原始资料条件的读者来说，本套书更是不可或缺的学习参考书。这套丛书充分体现了美国法学教育以案例教学为主的特点，以法院判例作为教学内容，采用苏格拉底式的问答方法，在课堂上学生充分参与讨论。这就要求学生不仅要了解专题法律知识，而且要理解法律判决书。本套丛书结合案例设计的大量思考题，对提高学生理解概念、提高分析和解决问题的能力，非常有益。本书及时补充出版最新的案例和法规汇编，保持四年修订一次的惯例，增补最新案例和最新学术研究成果，保证教材与时代发展同步。本丛书还有配套的教师手册，方便教师备课。

案例举要（Casenote Legal Briefs）美国最近三十年最畅销的法律教材的配套辅导读物。其中的每本书都是相关教材中的案例摘要和精辟讲解。该丛书内容简明扼要，条理清晰，结构科学，便于学生课前预习、课堂讨论、课后复习和准备考试。

除此之外，中信出版社还将推出教程系列、法律文书写作系列等美国法学教材的影印本。

美国法律以判例法为其主要的法律渊源，法律规范机动灵活，随着时代的变迁而对不合时宜的法律规则进行及时改进，以反映最新的时代特征；美国的法律教育同样贯穿了美国法律灵活的特性，采用大量的案例教学，启发学生的逻辑思维，提高其应用法律原则的能力。

从历史上看，我国的法律体系更多地受大陆法系的影响，法律渊源主要是成文法。在法学教育上，与国外法学教科书注重现实问题研究，注重培养学生分析和解决问题的能力相比，我国基本上采用理论教学为主，而用案例教学来解析法理则显得薄弱，在培养学生的创新精神和实践能力方面也做得不够。将美国的主流法学教材和权威的法律专业用书影印出版，就是试图让法律工作者通过原汁原味的外版书的学习，开阔眼界，取长补短，提升自己的专业水平，培养学生操作法律实际动手能力，特别是使我们的学生培养起对法律的精细化、具体化和操作化能力。

需要指出的是，影印出版美国的法学教材，并不是要不加取舍地全盘接收，我们只是希望呈现给读者一部完整的著作，让读者去评判。“取其精华去其糟粕”是我们民族对待外来文化的原则，我们相信读者的分辨能力。

是为序。

*Copyright
in a
Global Information
Economy*



ASPEN PUBLISHERS, INC.
Legal Education Division

EDITORIAL ADVISORS

Erwin Chemerinsky

Sydney M. Irmas Professor of Public Interest Law, Legal Ethics,
and Political Science
University of Southern California

Richard A. Epstein

James Parker Hall Distinguished Service Professor of Law
University of Chicago

Ronald J. Gilson

Charles J. Meyers Professor of Law and Business
Stanford University
Mara and Eva Stern Professor of Law and Business
Columbia University

James E. Krier

Earl Warren DeLano Professor of Law
University of Michigan

Richard K. Neumann, Jr.

Professor of Law
Hofstra University School of Law

Kent D. Syverud

Dean and Garner Anthony Professor
Vanderbilt University Law School

Elizabeth Warren

Leo Gottlieb Professor of Law
Harvard University

EMERITUS ADVISORS

E. Allan Farnsworth

Alfred McCormack Professor of Law
Columbia University

Geoffrey C. Hazard, Jr.

Trustee Professor of Law
University of Pennsylvania

Bernard Wolfman

Fessenden Professor of Law
Harvard University

About Aspen Law & Business Legal Education Division

With a dedication to preserving and strengthening the long-standing tradition of publishing excellence in legal education, Aspen Law & Business continues to provide the highest quality teaching and learning resources for today's law school community. Careful development, meticulous editing, and an unmatched responsiveness to the evolving needs of today's discerning educators combine in the creation of our outstanding casebooks, coursebooks, textbooks, and study aids.

ASPEN LAW & BUSINESS
A Division of Aspen Publishers, Inc.
A Wolters Kluwer Company
www.aspenpublishers.com

For Andrew.

—J.E.C.

For Cassie, Alex, and Cameron.

—L.P.L.

For Tade, and in honor of Mom and Dad.

—R.G.O.

For James and Mom.

—M.A.O.

Preface

From the printing press to photocopying machines to the Internet, the tale of copyright has been linked inextricably to the development of technologies for creating and distributing the fruits of intellectual creativity. Again and again, technological innovation has altered the relationships between authors and their raw material and between copyright owners and users of copyrighted works. These changes have engendered repeated struggles to find the proper balance between the rights of copyright owners and the rights and privileges of members of the public to use and transform those works. Today, the pace of technological innovation is relentless, and the copyright balancing act has become correspondingly more difficult. Determining how copyright law should respond to the challenges posed by digital technologies and communications networks is a pressing, and controversial, task. Efforts to address these challenges, moreover, are increasingly global in nature. The days in which the United States could implement changes in copyright law and policy without considering the international ramifications are long past.

This book is designed to emphasize the evolving nature of copyright law, and the copyright system more generally, in response to technological change and the pressures of globalization, and to provide students with a strong theoretical background with which to evaluate the public policy implications of these changes. In particular, this book differs in three important ways from the traditional copyright text.

First, understanding the role of copyright law in the emerging information economy requires more than a study of the Copyright Act and copyright case law. To understand why copyright law is the way it is, and to develop an appreciation for what it might become, one must consider the history and evolution of technologies for creating and distributing copyrighted works; the structure and political influence of the major copyright industries; and the availability of other legal regimes (such as contract law) to supplement or even supplant copyright protection. We include introductory materials on these topics in Chapter 2 of the book, and then give substantial consideration throughout the book to the historical, technological, political and legal contexts within which copyright law operates. Thus, for example, Chapter 6, which explores the exclusive rights of copyright owners, includes a section on

copyright in the music industry and expanded coverage of libraries and their role in distributing copyrighted content. Chapters 8 and 9, respectively, consider the growing importance of copy-protection technologies and the increasing use of contracts and other state law regimes of protection to provide additional legal protection for copyrighted content.

Second, we have greatly expanded the use of secondary source materials by legal academics and other commentators seeking to understand and shape the evolution of copyright and information policy. The structure of the modern copyright system reflects theoretical as well as historical and political concerns. In particular, the study of copyright law cannot ignore economic analysis, which has become prevalent in judicial opinions in copyright cases. As the rights granted to copyright owners expand in scope and duration, mapping the intersection between copyright law and freedom of speech also has become increasingly important. We introduce the major theoretical perspectives on copyright in Chapter 1, and then return to them throughout the book by posing questions that require students to apply theoretical analysis to deepen their understanding of the statutes, treaties, cases, and problems.

Finally, we have greatly expanded the use of international materials. Rather than leaving these materials until the end of the book, as is usual in introductory copyright texts, we introduce the various international copyright treaties in Chapter 2, and provide a general framework for understanding their role and operation. We then return to these materials throughout the text, considering specific treaty provisions as they become relevant to the topics being studied. Additionally, to give students a broader perspective on the variety of policy choices that a country might implement in its copyright laws, in many instances we ask students to compare specific domestic copyright rules with the corresponding rules of other countries.

Our hope is that students who use this book will come to understand and appreciate the copyright system as a work-in-progress, and to recognize that copyright is not simply a regime of private law, but rather one that implicates both private and public interests. Our further hope is that students will develop the skills necessary to identify and think critically about both contested issues in particular cases and larger patterns of change within the copyright system as a whole. We believe that students will emerge from this process of exploration better suited to practice copyright law in a world in which continual change is the norm.

*Julie E. Cohen
Lydia P. Loren
Ruth G. Okediji
Maureen A. O'Rourke*

August 2002

Acknowledgments

We would like to thank Richard Chused, Shubha Ghosh, Paul Goldstein, Dennis Karjala, David Lange, Mark Lemley, Jessica Litman, Michael Meurer, Harvey Perlman, Pamela Samuelson, and a number of anonymous colleagues for their detailed review of this project at various stages of completion, and for their many helpful and generous suggestions. We gratefully acknowledge the research assistance of Teeshna Bahadur, Stacy Blasberg, Casey Caldwell, Mitzi Chang, Cyrus Christenson, Olivia Farrar-Wellman, Sally Garrison, Stephen Goldberg, Michael Green, Scott Katz, Anne Koch, Charles McLawhorn, Ilana Safer, Julie Short, Stephanie Smith, and Victor Wandres, and the secretarial and administrative assistance of Melissa Adamson, Suzan Benet, Sue Morrison, and Irene Welch. We would also like to thank John Showalter for his expert assistance in obtaining permission to reproduce excerpts from the various books, law review articles, and other secondary sources quoted in the text, Andy Marion for word processing wizardry, and Lisa Bowles, Tracey Bridgman, Stephanie Burke, Raquel Ortiz, Russ Sweet, and Joel Wegemer for library services.

Finally, we acknowledge the authors and/or copyright owners of the following images and excerpts, used in this book with their permission.

Books and Articles

- Barlow, John Perry, *The Economy of Ideas*, Wired 2.03, March 1994, at 84. Reprinted courtesy of John Perry Barlow.
- Browning, John, *Africa 1, Hollywood 0*, Wired 5.03, March 1997, at 61. Reprinted courtesy of John Browning.
- Cohen, Julie E., *A Right to Read Anonymously: A Closer Look at "Copyright Management" in Cyberspace*, 28 Connecticut Law Review 981 (1996). Reprinted courtesy of Julie Cohen.
- Cohen, Julie E., Lochner in Cyberspace: The New Economic Orthodoxy of "Rights Management", 97 Michigan Law Review 462 (1998). Reprinted courtesy of Julie Cohen.
- Ginsburg, Jane C., No "Sweat"? Copyright and Other Protection of Works of Informa-

- tion After Feist v. Rural Telephone*, 92 Columbia Law Review 338 (1992). Reprinted courtesy of Jane Ginsburg and the Columbia Law Review.
- Goldstein, Paul, *Copyright's Highway: From Gutenberg to the Celestial Jukebox* (1994). Reprinted courtesy of Paul Goldstein.
- Goldstein, Paul, *Derivative Rights and Derivative Works in Copyright*, 30 Journal of the Copyright Society 209 (1983). Reprinted courtesy of Paul Goldstein.
- Gordon, Wendy J., *A Property Right in Self-Expression: Equality and Individualism in the Natural Law of Intellectual Property*, 102 Yale Law Journal 1533 (1993). Reprinted courtesy of Wendy Gordon.
- Gordon, Wendy J., *Fair Use as Market Failure: A Structural and Economic Analysis of the Betamax Case and Its Predecessors*, 82 Columbia Law Review 1600 (1982). Reprinted courtesy of Wendy Gordon.
- Hardy, Trotter, *Property (and Copyright) in Cyberspace*, 1996 University of Chicago Legal Forum 217 (1996). Reprinted courtesy of the University of Chicago Legal Forum.
- Lemley, Mark A., *Dealing with Overlapping Copyrights on the Internet*, 22 University of Dayton Law Review 547 (1997). Reprinted courtesy of Mark Lemley.
- Lemley, Mark A., & Eugene Volokh, *Freedom of Speech and Injunctions in Intellectual Property Cases*, 48 Duke Law Journal 147 (1998). Reprinted courtesy of Mark Lemley.
- Litman, Jessica, *The Public Domain*, 39 Emory Law Journal 965 (1990). Reprinted courtesy of Jessica Litman.
- Netanel, Neil Weinstock, *Copyright and a Democratic Civil Society*, 106 Yale Law Journal 283 (1996). Reprinted courtesy of Neil Netanel and by permission of The Yale Law Journal Company and William S. Hein Company.
- Okediji, Ruth Gana, *Copyright and Public Welfare in Global Perspective*, 7 Indiana Journal of Global Legal Studies 117 (1999). Reprinted courtesy of the Indiana Journal of Global Legal Studies.
- Reichman, J.H. & Pamela Samuelson, *Intellectual Property Rights in Data?*, 50 Vanderbilt Law Review 51 (1997). Reprinted courtesy of J.H. Reichman and Pamela Samuelson.
- Reichman, J.H., *Legal Hybrids Between the Patent and Copyright Paradigms*, 95 Columbia Law Review 2432 (1995). Reprinted courtesy of J.H. Reichman and the Columbia Law Review.
- Samuelson, Pamela, et al., *A Manifesto Concerning the Legal Protection of Computer Programs*, 94 Columbia Law Review 2308 (1994). Reprinted courtesy of Pamela Samuelson and the Columbia Law Review.
- Samuelson, Pamela, *Intellectual Property and the Digital Economy: Why the Anti-Circumvention Regulations Need to Be Revised*, 14 Berkeley Technology Law Journal 519 (1999). Reprinted courtesy of Pamela Samuelson and the University of California, Berkeley.
- Yen, Alfred C., *Copyright Opinions and Aesthetic Theory*, 71 Southern California Law Review 247 (1998). Reprinted courtesy of Alfred C. Yen.

Illustrations

- Air Pirates* cover illustration. Mickey Mouse © Disney Enterprises, Inc. Reprinted courtesy of Disney Enterprises, Inc.

- Bolling, Ruben, editorial cartoon, "Library System Terrorizes Publishing Industry".
© 2000 Ruben Bolling. Reprinted courtesy of Ruben Bolling.
- Borgman, Jim, editorial cartoon, "No More Packing in the Middle of the Night!".
© 1984 King Features. Reprinted with special permission of King Features
Syndicate.
- Gere, Joanne, photograph of "RIBBON Rack in Shadow." Reprinted courtesy of
Brandir International, Inc.
- Kieselstein-Cord, Barry, "Winchester" and "Vaquero" belt buckles. © 1976 (Win-
chester) and 1978 (Vaquero) Kieselstein-Cord. Reprinted courtesy of Barry
Kieselstein-Cord.
- Lotus Development Corporation, screen shot of Lotus 1-2-3. Screen captures © 1987
IBM Corporation. Reprinted courtesy of IBM Corporation.
- Original Artwork by Saul Steinberg. Copyright © 1976 The New Yorker Magazine Inc.
Reprinted by permission of Condé Nast Publications, Inc./The Saul Steinberg
Foundation/Artists Rights Society (ARS), New York. All Rights Reserved.
- Ty, Inc., "Squealer" beanbag toy. Reprinted courtesy of Ty, Inc. Photograph of
"Squealer" and "Preston" beanbag toys reprinted courtesy of Banner & Witcoff,
Ltd.

Summary of Contents

<i>Contents</i>	XIII
<i>Preface</i>	XXV
<i>Acknowledgments</i>	XXVII

PART I INTRODUCTION TO COPYRIGHT LAW

Chapter 1	The Purposes of Copyright Law	3
Chapter 2	Copyright in Context: Past and Present	25

PART II THE SUBJECT MATTER OF COPYRIGHT LAW

Chapter 3	Authors, Writings, and Progress	63
Chapter 4	Acquiring, Keeping, and Transferring Copyright	153
Chapter 5	Protected Works and Boundary Problems	215

PART III COPYRIGHT SCOPE AND ENFORCEMENT

Chapter 6	The Statutory Rights of Copyright Owners	317
Chapter 7	Another Limitation on Copyright: Fair Use	491
Chapter 8	Technological Protections	573
Chapter 9	State Law Theories of Protection, and Their Limits	605
Chapter 10	The Copyright Infringement Lawsuit	679

<i>Table of Cases</i>	743
<i>Tables of Statutes and Other Laws</i>	749
<i>Table of Authorities</i>	753
<i>Index</i>	759

Contents

<i>Preface</i>	XXV
<i>Acknowledgments</i>	XXVII

PART I Introduction to Copyright Law

I	<i>The Purposes of Copyright Law</i>	3
A.	The Theoretical Underpinnings of Copyright Law	6
1.	Incentives for Authors and Publishers	6
	Trotter Hardy, <i>Property (and Copyright) in Cyberspace</i>	8
	Julie E. Cohen, <i>Lochner in Cyberspace: The New Economic Orthodoxy of "Rights Management"</i>	10
2.	Authors' Rights	12
	John Locke, Two Treatises on Government	13
	Wendy J. Gordon, <i>A Property Right in Self-Expression: Equality and Individualism in the Natural Law of Intellectual Property</i>	14
3.	A Robust Public Domain	16
	Jessica Litman, <i>The Public Domain</i>	17
4.	An Uncensored Marketplace of Ideas	18
B.	What Public, and Whose Welfare?	21
	William P. Alford, <i>To Steal a Book Is an Elegant Offense</i>	21
	Ruth Gana Okediji, <i>Copyright and Public Welfare in Global Perspective</i>	22

2

Copyright in Context: Past and Present

25

A. Looking Back: Striking the Balance	25
1. From Censorship to Markets	25
2. "Progress," Incentives, and Access	27
3. Copyright Law and Technological Change	30
a. New Methods of Creating New Works	31
b. New Technologies for Distributing and Copying Works	32
c. Legal Responses to New Technologies	33
4. The 1976 Act and Beyond	34
5. The Copyright Industries	38
B. Looking Forward: New Challenges	41
1. Does Information Want to Be Free?	41
John Perry Barlow, <i>The Economy of Ideas</i>	41
Tom W. Bell, <i>Fair Use vs. Fared Use: The Impact of Automated Rights Management on Copyright's Fair Use Doctrine</i>	42
2. How Should the Copyright "Pie" Be Sliced?	43
Paul Goldstein, <i>Copyright's Highway: From Gutenberg to the Celestial Jukebox</i>	44
3. Are New Kinds of Intellectual Property Protection Needed?	46
4. Globalization	47
C. The Growing Role of International Treaties and Institutions	48
1. From Pirate to Holdout to Enforcer: International Copyright and the United States	49
2. The Berne Convention	51
3. The TRIPs Agreement	53
4. Copyright Lawmaking and Enforcement Under the Berne Convention and the TRIPs Agreement	55
a. The World Trade Organization	56
b. The World Intellectual Property Organization (WIPO) and the 1996 WIPO Treaties	57

PART II

The Subject Matter of Copyright Law

3

Authors, Writings, and Progress

63

A. The Elements of Copyrightable Subject Matter	63
1. Fixation	65
a. A Functional Approach	65
<i>Williams Electronics, Inc. v. Artic International, Inc.</i>	66
<i>MAI Systems Corp. v. Peak Computer, Inc.</i>	69
b. A Technology-Specific Approach: Transmission and Contemporaneous Fixation, and the Problem of Bootleg Recordings	72