

Executive Toolbox

Copyright Reference Guide

AFFILIATED ASSOCIATIONS

Visual Media Alliance
Printing Industries Association of San Diego, Inc.

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What is Copyright?

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 This protection is available to both published and unpublished work. Section 1206 of the Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the copyrighted work in copies
- To prepare derivative works based upon the copyrighted work
- To distribute copies...of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending
- To display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, ...pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work.
- It is illegal for anyone to violate any of the rights provided by the Act to the owner of copyright. These rights, however are not unlimited in scope. Sections 107 through 119 of the Copyright Act establish limitations on these right. ...One major limitation is the doctrine of "fair use," which is given a statutory basis in section 107 of the Act.

Who Can Claim Copyright?

Copyright protection exists from the time the work is created in fixed form; that is, it is an incident of the process of authorship. The copyright in the work of authorship immediately becomes the property of the author who created it. Only the author or those deriving their rights through the author can claim copyright.

In the case of works made for hire, the employer and not the employee is presumptively considered the author. Section 101 of the copyright statute defines a "work made for hire" as:

- A work prepared by an employee within the scope of his or her employment; or
- A work specially ordered or commissioned for use as a contribution to a collective work, as part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

The authors of a joint work are co-owners of the copyright in the work, unless there is an agreement to the contrary.

How Long Does Copyright Endure?

A work that is created on or after January 1, 1978, is automatically protected from the moment of its creation, and is ordinarily given a term enduring for the author's life, plus an additional 50 years after the author's death. In the case of a "joint work prepared by two or more authors who did not work for hire," the term lasts for 50 years after the last surviving author's death.

For works made for hire, and for anonymous and pseudonymous works (unless the author's identity is revealed in Copyright Office records), the duration of copyright will be 75 years from publication or 100 years from creation, whichever is shorter.

How to Secure a Copyright

No publication or registration or other action in the Copyright Office is required to secure copyright. There are, however, certain definite advantages to registration (among which) are the following:

- Registration establishes a public record of the copyright
- Before an infringement suit may be filed in court, registration is necessary for works of U.S. origin and works not originating a Berne Union country (For more information request Circular 93 from the Copyright Office)
- If made before or within 5 years of publication, registration will establish prima facie evidence in course of the validity of the copyright and of the facts stated in the certificate; and
- If registration is made within 3 months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner.

Contact the Copyright Office in Washington D.C. for applicable forms for registration of copyright and notice placement.

Transfer of Copyright

Any or all of the exclusive rights, or any subdivision of those rights, of the copyright owner may be transferred, but the transfer of exclusive rights is not valid unless that transfer is in writing and signed by the owner of the rights conveyed (or such owner's duly authorized agent). Transfer of a right on a nonexclusive basis does not require a written agreement (Ed note: But to prevent confusion on what rights are specifically transferred, it is good practice to put the conditions of the transfer in writing.)

A copyright may also be conveyed by operation of law and may be bequeathed by will or pass as personal property by the applicable laws of interstate succession.

Copyright is a personal property right, and it is subject to the various state laws and regulations that govern the ownership, inheritance, or transfer of personal property as well as terms of contracts or conduct of business. For information about relevant state laws, consult an attorney.

What is Not Protected

Works that have not been fixed in a tangible form of expression.

- Titles, names, short phrases, and slogans; familiar symbols or design; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration.
- Works consisting entirely of information that is common property and containing no original authorship. For example: standard calendars, height and weight charts, tape measures and rules, and lists or tables taken from public documents or other common sources.

To reproduce the copyrighted work in copies...

- To prepare derivative works based upon the copyrighted work
- To distribute copies...of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending
- To display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, ...pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work.
- It is illegal for anyone to violate any of the rights provided by the Act to the owner of copyright. These rights, however are not unlimited in scope. Sections 107 through 119 of the Copyright Act establish limitations on these right. ...One major limitation is the doctrine of "fair use," which is given a statutory basis in section 107 of the Act.

Notice of Copyright

For works first published on and after March 1, 1989, use of the copyright notice is optional, though highly recommended. Before March 1, 1989, the use of the notice was mandatory on all published works, and any work first published before that date must bear a notice or risk loss of copyright protection.

(The Copyright Office does not take a position on whether works first published with notice before March 1, 1989, and reprinted and distributed on and after March 1, 1989, must bear the copyright notice.)