

COPYRIGHT: What is it and What Does it Protect?

A copyright is a type of intellectual property protection for original works of authorship. An *original work of authorship* is a work that is independently created by a human author and possesses some minimal degree of creativity. The original work of authorship must be *fixed* in a *tangible medium* of expression. This does not mean that the idea or fact needs to be expressed as words on a printed page, so long as it may be communicated with the aid of a machine or device. For example, data stored in a computer memory is considered *fixed*.

Copyrightable works include the following broad categories:

- literary works;
- musical works, including any accompanying words;
- dramatic works, including any accompanying music;
- pantomimes and choreographic works;
- pictorial, graphic, and sculptural works;
- motion pictures and other audiovisual works;
- sound recordings; and
- architectural works.

Rights of Copyright Owner

The owner of a copyright has the exclusive right to do the following and authorize others to do the following:

- reproduce the work;
- prepare derivative works based upon the work;
- distribute copies of the work to the public by sale, or leasing;
- perform the work publicly; and
- display the work publicly.

Transferring Copyright Rights

Like other property, all or part of the rights in a work may be transferred by the copyright owner. The United States Copyright Office keeps the records of transfers submitted to them. If you have executed a transfer and wish to record the document, instructions for doing so are available at www.copyright.gov.

How is a Copyright Different from a Patent or Trademark?

Copyright protects original works of authorship, while a patent protects inventions, ideas, or discoveries, and a trademark protects words, phrases, symbols, or designs used to identify the source of goods or services.

Copyright does not protect:

- Ideas, procedures, methods, systems, processes, concepts, principles, or discoveries;
- Works that are not fixed in a tangible form;
- Titles, names, short phrases, and slogans;
- Familiar symbols or designs;
- Mere variations of typographic ornamentation, lettering, or coloring; or
- Mere listings of ingredients or contents.

When is a Work Protected?

A work gets copyright protection the moment it is created and fixed in a tangible form that is perceptible either directly or with the aid of a machine or device, such as writing put on paper or data stored on a computer.

It is important to mark copyrighted work with three elements to notify the public of the copyright and prevent an infringer claiming they did not know the work was protected:

1. the copyright symbol ©, the word “Copyright,” or the abbreviation “Copr.”;
2. the name of the copyright owner; and
3. the year of the work’s creation or, if published, year of publication.

Copyright Registration

Registration is a legal formality intended to make a public record of the basic facts of a particular copyright. In general, registration is voluntary and not required to have a copyright. However, U.S. copyright law provides inducements or advantages to copyright owners who register. For instance, **registration is required to bring a lawsuit for infringement of a U.S. work.**

Registration may be made at any time within the life of the copyright, but it is best to register a work early to avoid loss of potential damages for infringement. Registration within three months of the work’s publication date or before any copyright infringement actually begins is considered “timely” and makes it much easier to sue and recover money from an infringer. Specifically, a timely registration creates a legal presumption that your copyright is valid and allows recovery up to a set limit without needing to prove actual monetary harm.

The Copyright Office provides registration forms online at: www.copyright.gov/forms and upon request by either postal mail or calling 202-707-9100.

Copyright Term

The term of copyright for a particular work depends on several factors, including whether it has been published, and, if so, the date of first publication. As a general rule, for works created after January 1, 1978, copyright protection lasts for the life of the author plus an additional 70 years. More relevant information can be found at:

- www.copyright.gov/circs/circ15a.pdf
- www.copyright.gov/circs/circ01.pdf

Works created on or after January 1, 1978, are not subject to renewal registration.

Infringement of Your Copyright

If the Copyright Office issued a registration for the relevant trademark, a party may protect their copyrights against unauthorized use by filing a civil lawsuit in federal district court. If you believe that your copyright has been infringed, consult an attorney as soon as possible.

Infringing Other’s Copyrights

If you use a copyrighted work without authorization, the owner may be entitled to bring an infringement suit against you. Although a quote or a sample may be used without permission in circumstances under the *fair use* doctrine, it is best to seek permission in cases of doubt.

How do you get permission? Ask for it. You may contact the copyright owner directly if you know who that is. If you are uncertain about the ownership or related questions, you may search or request the Copyright Office to search its records. Look for copyright notice on the work you wish to use for ownership information.

Fair Use

One of the rights accorded to a copyright owner is the right to reproduce the work. This right is subject to certain limitations. One of the more important limitations is the doctrine of *fair use*.

17 U.S.C. § 107 contains a list of the purposes for which the reproduction of a work may be considered “fair,” such as criticism, comment, news reporting, teaching, scholarship, and research. It also sets out a *four-factor* test that courts have followed:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

The distinction between *fair use* and infringement may be unclear and not easily defined, so consult an attorney if you think you have a problem. The safest course is always to get permission from the copyright owner before using copyrighted material.

Made for Hire – Who Owns the Work, Creator or Employer?

Work made for hire means the work is owned by the hiring party, not the person who created the work. Whether or not a work is made for hire is determined by the relationship between the parties.

If an employee creates a work, then generally the work is considered a work made for hire and the employer owns the copyright. If an independent contractor (instead of an employee) creates the work, the work will also be a work made for hire

when certain conditions are met. Otherwise, the independent contractor owns the work.

If you hire an independent contractor to prepare some work for you, like a brochure or marketing materials, you should specify in your agreement that you will own the copyright on the work.

Website & Domain Names

Copyright law does not protect domain names, though domain names may be trademarkable. However, copyright may protect the original authorship appearing on a website, including writings, artwork, photographs, and other forms of authorship protected by copyright.

Read about how to register contents of a website at www.copyright.gov/circs/circ66.pdf.