

COPYRIGHT LAW



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What Is A Copyright?

A copyright is a property right attached to literary or artistic creations. A copyright can be owned just like any other type of property such as stocks, land, or money. Since it can be owned, it can also be sold, traded, given away, and devised in your will, subject to a few limitations.

Why Do We Have Copyrights?

Copyrighting exists to protect the proprietary interests in creative endeavors such as books, plays, paintings, sculptures, songs, films, records, and computer programs. If others were free to use, copy, and sell these creations without permission, they would be profiting from someone else's efforts. In many ways, such wrongful use would be theft. The theft may not be of a tangible item, but the results are the same. The true owner would be deprived of the full value and use of his or her property. In such a system there would be no monetary incentive for artistic people to create.

The drafters of the Constitution recognized this need for copyright protection. Thus, Article I, Section 8, Clause 8 states:

"The Congress shall have power . . . to promote the progress of science and useful acts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Congress has exercised this power only a few times. The most sweeping revision, The Copyright Act of 1976, made copyright law an exclusively federal matter. See 17 USC §§ 101 et. seq.

What May Be Copyrighted?

The 1976 Act gives copyright protection to "original works of authorship fixed in any tangible medium of expression, now known or later developed." Thus, there are three requirements for protection:

The work must be a work of authorship.

Case law has interpreted "work of authorship" to mean the work must be artistic. It must be valued because of its expression not because of its usefulness. (If the creation is useful, such as a better mousetrap, then you do not seek copyright protection, you seek a patent.) The greater the chance something can be patented, the less likely it is to receive copyright protection.

The work must be original.

Copyright protection is given to the originator of the work. An artist or author gets protection as long as he or she created the work, without being instructed to do so by an employer.

The work must be fixed in a "tangible medium of expression."

This is a fancy way of saying people cannot copyright ideas. If Joe Writer has an idea for a novel in my head, Joe cannot copyright the idea. However, as soon as Joe types the first page, he can copyright that page. One court said protection exists for "any physical rendering of aesthetic labor." The law does not require the work be "good" or "beautiful" or "worthwhile." Joe can copyright any ugly sculpture or even a letter to my uncle so long as the above three requirements are met. This broad interpretation is required by first amendment to the Constitution which protects the freedom of expression. The courts do not want to be burdened with the task of deciding what has artistic merit.

How Do You Copyright Your Creation?

Copyright attaches to a work upon being fixed in a tangible medium. In other words, upon creation and written down or performed and recorded. So you have a copyright upon creation of the work – you do not have to register it but only by registration are you afforded protection of the federal copyright law.

There are two possible steps in the copyright process: (1) Registration with the U.S. Register of Copyrights; and (2) Deposit with the U.S. Library of Congress.

These two steps afford you protection under the federal copyright law. However, there is a third step that is not mandatory, but is highly recommended. That is Notice to the public that the piece of work has been copyrighted. This is still a good idea as it puts the public on notice that the work is copyrighted. It also provides the name of the copyright owner and the year of publication. Thus, if a person wants to copyright Joe's novel, all that person has to do is type or print (usually on the cover page):

"©1996 by Justin McLitus."

The process is that simple. The law also provides for registration and deposit, but these are not required for copyright protection. Copyright protection requires only notice. Registration is important, however, because an owner cannot bring a copyright infringement suit until the copyright is registered.

Deposit is mandated so the Library of Congress gets a copy of the creation, but like registration, deposit is not a requirement for copyright protection. Deposit is not required until demand is made by the copyright office.

How Long Does Copyright Protection Last?

For works copyrighted after the 1976 Act, protection lasts for the life of the author plus 70 years. Congress does not have the power to extend protection forever because the

Constitution only authorizes protection "for limited times." Indefinite protection would be a bad idea in any event. At some point in time, copyright protection must cease and the work will pass into "the public domain." Indefinite protection is not needed to provide an incentive for artists to create.

If the work is a joint work, the protection ends 70 years after the death of the last surviving author. If the work is made for hire (such as if the Air Force copyrighted this handout), the protection ends 95 years after the publication or 120 years after creation, whichever comes first. (Note: A person can create something today, but not show it (publish it) to anyone else for many years).

Can I Copyright Things I Create For My Job?

Probably not. If you are being paid to create something, the copyright usually belongs to the employer because the creation is a "work for hire." The answer is different if you write a book on your lunch hour.

What Rights Does The Copyright Owner Get?

The copyright owner gets five exclusive rights:

- A. Reproduction: If I write a novel, you cannot copy it without my permission.
- B. Derivative Works: If my novel is successful, you cannot make a movie from it without my permission.
- C. Distribution: You cannot distribute copies of my novel without my permission.
- D. Performance: If I write a play, you cannot perform it without my permission.
- E. Display: If I build a sculpture and loan it to a museum, the museum cannot photograph it and sell the photos all over the world without my permission.

NOTE: The owner of a copyright can reserve some of these rights even if selling others. For instance, I can sell the right to reproduce and distribute my novel to a publisher without giving the publisher permission to create derivative works.

What Is The Fair Use Doctrine?

The "fair use" doctrine is a defense to a copyright infringement suit. It was developed by the courts to allow critics, reporters, teachers, and scholars to copy things without having to obtain permission from the copyright owner. For instance, the fair use doctrine is why CBS can broadcast a presidential speech without violating the copyright (assuming the speech was copyrighted). Similarly, a teacher who photocopies one article from a newspaper to use in a class can probably invoke the fair use doctrine. The fair use doctrine is complex and if you have questions about it, you should seek legal advice. Whether certain conduct or use falls within the fair use doctrine depends on:

- A. The purpose of the use, including whether it is for profit or not;
- B. The nature of the work being used;

- C. The amount of the work being used;
- D. The economic harm, if any, caused to the owner of the copyright;
- F. The intent of the user; and
- E. The concerns raised by the freedom of expression guaranteed in the constitution.

TWO EXAMPLES: First, I write a novel. You photocopy the entire book and print 2,000 copies which you intend to sell to people who otherwise would have bought it from my publisher. Your "fair use" claim is not valid. Second, I write a novel. A teacher photocopies three pages and shares the copies with her class as an example of bad writing. She has a strong "fair use" claim.

What Can I Do If Someone Infringes My Copyright?

- A. You can sue in federal court seeking an injunction, a court order prohibiting the defendant from copying your work.
- B. You can sue in federal court seeking money damages. You cannot do this until you have registered the copyright.
- C. You can ask the court to impound the copies the infringer has made. The court orders the infringer to turn over the illicit copies. This method is a preferred remedy in cases of record pirating.
- D. You can pursue criminal charges against "willful infringers who seek financial gain." The maximum penalty is \$10,000 and up to one year in prison.
- E. You can also recover your attorney's fees and court costs. This area of law is complex and the information provided is very general. Should you have specific questions, you should consult with a private attorney.

Sources:

<http://www.copyright.gov/title17/92chap1.html#107>

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