

Copyright 101

Copyrights. Copyright is a form of protection provided by the laws of the United States to the authors of “original works of authorship,” including literary, dramatic, musical, artistic works such as poetry, novels, movies, songs, computer software and architecture, and certain other intellectual works, whether published or unpublished. (Copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed.) The 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

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

In addition, certain authors of works of visual art have the rights of attribution and integrity.

It is illegal for anyone to violate any of the rights provided by the copyright law to the owner of copyright. These rights, however, are not unlimited in scope. In some cases, these limitations are specified exemptions from copyright liability. One major limitation is the doctrine of "fair use." In other instances, the limitation takes the form of a "compulsory license" under which certain limited uses of copyrighted works are permitted upon payment of specified royalties and compliance with statutory conditions.

Poor Man’s Copyright

The practice of mailing a copy of one’s own work to one’s self is sometimes called a “poor man’s copyright.” There is no provision in the copyright law regarding any such type of protection, and it is not a substitute for registration. This practice is used primarily to establish when the work was created via the postmark on the unopened envelope.

Copyright Application Requirements.

1. A properly completed application form.

2. A nonrefundable filing fee of \$30 for each application.
3. A nonreturnable deposit of the work being registered. The deposit requirements vary in particular situations. The general requirements follow. Also note the information under “Special Deposit Requirements” below.
 - If the work was first published in the United States on or after January 1, 1978, two (2) complete copies or phonorecords of the best edition.
 - If the work was first published in the United States before January 1, 1978, two (2) complete copies or phonorecords of the work as first published.
 - If the work was first published outside the United States, one (1) complete copy or phonorecord of the work as first published.
 - If sending multiple works, all applications, deposits, and fees should be sent in the same package. If possible, applications should be attached to the appropriate deposit. Whenever possible, number each package (e. g., 1 of 3, 2 of 4) to facilitate processing.

Special Deposit Requirements. Special deposit requirements exist for many types of works. The following are prominent examples of exceptions to the general deposit requirements:

- If the work is a motion picture, the deposit requirement is one (1) complete copy of the unpublished or published motion picture **and** a separate written description of its contents, such as a continuity, press book, or synopsis.
- If the work is a literary, dramatic, or musical work **published only in a phonorecord**, the deposit requirement is one (1) complete phonorecord.
- If the work is an unpublished or published computer program, the deposit requirement is one (1) visually perceptible copy in source code of the **first 25 and last 25 pages** of the program. For a program of fewer than 50 pages, the deposit is a copy of the entire program.
- If the work is in a CD-ROM format, the deposit requirement is one (1) complete copy of the material, that is, the CD-ROM, the operating software, and any manual(s) accompanying it. If registration is sought for the computer program on the CD-ROM, the deposit should also include a printout of the first 25 and last 25 pages of source code for the program.

In the case of works reproduced in three-dimensional copies, identifying material such as photographs or drawings is ordinarily required. Other examples of special deposit requirements (but by no means an exhaustive list) include many works of the visual arts such as greeting cards, toys, fabrics, oversized materials; video games and other machine-readable audiovisual works; automated databases; and contributions to collective works.

Who Can Claim Copyright. The way in which copyright protection is secured is frequently misunderstood. No publication or registration or other action in the Copyright Office is required to secure copyright. Copyright protection subsists from the time the work is created in fixed form, such as a book, manuscript, sheet music, film, videotape, cassette tape, or CD. The copyright in the work of authorship *immediately* becomes the property of the author who created the work. Only the author or those deriving their rights through the author can rightfully claim copyright. There are, however, certain definite advantages to registration.

In the case of works made for hire, the employer and not the employee is considered to be the author. The Copyright Act defines a “work made for hire” as:

- (1) a work prepared by an employee within the scope of his or her employment; or
- (2) a work specially ordered or commissioned for use as:
 - a contribution to a collective work
 - a part of a motion picture or other audiovisual work
 - a translation
 - a supplementary work
 - a compilation
 - an instructional text
 - a test
 - answer material for a test
 - a sound recording
 - 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.

Copyright in each separate contribution to a periodical or other collective work is distinct from copyright in the collective work as a whole and vests initially with the author of the contribution.

What Works Are Protected. Copyright protects “original works of authorship” that are fixed in a tangible form of expression. The fixation need not be directly perceptible so

long as it may be communicated with the aid of a machine or device. Copyrightable works include the following categories:

- (1) literary works;
- (2) musical works, including any accompanying words
- (3) dramatic works, including any accompanying music
- (4) pantomimes and choreographic works
- (5) pictorial, graphic, and sculptural works
- (6) motion pictures and other audiovisual works
- (7) sound recordings
- (8) architectural works

These categories should be viewed broadly. For example, computer programs and most “compilations” may be registered as “literary works”; maps and architectural plans may be registered as “pictorial, graphic, and sculptural works.”

What Is Not Protected. Several categories of material are generally not eligible for federal copyright protection. These include among others:

- Works that have *not* been fixed in a tangible form of expression (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded)
- Titles, names, short phrases, and slogans; familiar symbols or designs; 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 rulers, and lists or tables taken from public documents or other common sources)

Publication. Publication has a technical meaning in copyright law. According to the statute, “Publication is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display constitutes publication. A public

performance or display of a work does not of itself constitute publication.” Generally, publication occurs on the date on which copies of the work are first made available to the public.

Advantages to Copyright Registration. In general, copyright registration is a legal formality intended to make a public record of the basic facts of a particular copyright. However, registration is not a condition of copyright protection. Even though registration is not a requirement for protection, the copyright law provides several inducements or advantages to encourage copyright owners to make registration. Among these advantages are the following:

- Registration establishes a public record of the copyright claim.
- Before an infringement suit may be filed in court, registration is necessary for works of U. S. origin.
- If made before or within 5 years of publication, registration will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate.
- 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.
- Registration allows the owner of the copyright to record the registration with the U. S. Customs Service for protection against the importation of infringing copies. For additional information, request Publication No. 563 “How to Protect Your Intellectual Property Right,” from: U.S. Customs Service, P.O. Box 7404, Washington, D.C. 20044. See the U.S. Customs Service Website at **www.customs.gov** for online publications.

Registration may be made at any time within the life of the copyright. Unlike the law before 1978, when a work has been registered in unpublished form, it is not necessary to make another registration when the work becomes published, although the copyright owner may register the published edition, if desired.

Who May File for a Copyright. The following persons are legally entitled to submit an application form:

- **The author.** This is either the person who actually created the work or, if the work was made for hire, the employer or other person for whom the work was prepared.
- **The copyright claimant.** The copyright claimant is defined in Copyright Office regulations as either the author of the work or a person or organization that has obtained ownership of all the rights under the copyright initially belonging to the author. This category includes a person

or organization who has obtained by contract the right to claim legal title to the copyright in an application for copyright registration.

- **The owner of exclusive right(s).** Under the law, any of the exclusive rights that make up a copyright and any subdivision of them can be transferred and owned separately, even though the transfer may be limited in time or place of effect. The term “copyright owner” with respect to any one of the exclusive rights contained in a copyright refers to the owner of that particular right. Any owner of an exclusive right may apply for registration of a claim in the work.
- **The duly authorized agent** of such author, other copyright claimant, or owner of exclusive right(s). Any person authorized to act on behalf of the author, other copyright claimant, or owner of exclusive rights may apply for registration.

Fair Use.

One of the rights accorded to the owner of copyright is the right to reproduce or to authorize others to reproduce the work in copies or phonorecords, subject to certain limitations in the Copyright Act. One of the more important limitations is the doctrine of “fair use,” which sets forth various purposes for which the reproduction of a particular work may be considered “fair,” such as criticism, comment, news reporting, teaching, scholarship, and research. The following four factors are to be considered in determining whether or not a particular use is fair: (1) the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) 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. *There is no specific number of words, lines, or notes that may safely be taken without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission.* The safest course is always to get permission from the copyright owner before using copyrighted material.

Copyright Infringement.

If a copyrighted work is used without authorization, the owner may be entitled to bring an infringement action against the infringer. There are circumstances under the fair use doctrine where a quote or a sample may be used without permission. However, in cases of doubt, permission should be obtained.

Only the owner of copyright in a work has the right to prepare, or to authorize someone else to create, a new version of that work. Accordingly, one cannot claim copyright to another’s work, no matter how much is changed, without the owner’s consent.

A party may seek to protect his or her copyrights against unauthorized use by filing a civil lawsuit in federal district court. If one believe that one's copyright has been infringed, consult an attorney. In cases of willful infringement for profit, the U.S. Attorney may initiate a criminal investigation.

Notice of Copyright. The use of a copyright notice is no longer required under U. S. law, although it is often beneficial. Use of the notice may be important because it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication. Furthermore, in the event that a work is infringed, if a proper notice of copyright appears on the published copy or copies to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages.

The notice for visually perceptible copies should contain all the following three elements:

1. **The symbol** © (the letter C in a circle), or the word "Copyright," or the abbreviation "Copr.";
2. **The year of first publication** of the work. In the case of compilations or derivative works incorporating previously published material, the year date of first publication of the compilation or derivative work is sufficient. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying textual matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful article; and
3. **The name of the owner of copyright** in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

Example: © 2000 John Doe

The "C in a circle" notice is used only on "visually perceptible copies." Certain kinds of works--for example, musical, dramatic, and literary works--may be fixed not in "copies" but by means of sound in an audio recording. Since audio recordings such as audio tapes and phonograph disks are "phonorecords" and not "copies," the "C in a circle" notice is not used to indicate protection of the underlying musical, dramatic, or literary work that is recorded.

Form of Notice for Phonorecords and Sound Recordings. Sound recordings are defined in the law as "works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work." Common examples include recordings of music, drama, or lectures. A sound recording is not the same as a phonorecord. A phonorecord is the physical object in which works of authorship are embodied. The word "phonorecord" includes cassette tapes, CDs, LPs, 45 r. p. m. disks, as well as other formats.

The notice for phonorecords embodying a sound recording should contain all the following three elements:

1. **The symbol** Ⓟ (the letter P in a circle); and
2. **The year of first publication** of the sound recording; and
3. **The name of the owner of copyright** in the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the

owner. If the producer of the sound recording is named on the phonorecord label or container and if no other name appears in conjunction with the notice, the producer's name shall be considered a part of the notice.

Example: © 2000 A. B. C. Records Inc.

Length of Copyright. A work that is created (fixed in tangible form for the first time) 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 70 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 70 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 95 years from publication or 120 years from creation, whichever is shorter.

Works originally created before January 1, 1978, but not published or registered by that date, have been automatically brought under the statute and are now given federal copyright protection. The duration of copyright in these works will generally be computed in the same way as for works created on or after January 1, 1978: the life-plus-70 or 95/120-year terms will apply to them as well. The law provides that in no case will the term of copyright for works in this category expire before December 31, 2002, and for works published on or before December 31, 2002, the term of copyright will not expire before December 31, 2047.

A work of authorship is in the "public domain" if it is no longer under copyright protection or if it failed to meet the requirements for copyright protection. Works in the public domain may be used freely without the permission of the former copyright owner.

Transfer of Copyright. Any or all of the copyright owner's *exclusive* rights or any subdivision of those rights 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. 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 intestate succession.

Transfers of copyright are normally made by contract. The Copyright Office does not have any forms for such transfers. The law does provide for the recordation in the Copyright Office of transfers of copyright ownership. Although recordation is not required to make a valid transfer between the parties, it does provide certain legal advantages and may be required to validate the transfer as against third parties.

International Copyright Protection. There is no such thing as an "international copyright" that will automatically protect an author's writings throughout the entire world. Protection against unauthorized use in a particular country depends, basically, on the national laws of that country. However, most countries do offer protection to foreign works under certain conditions, and these conditions have been greatly simplified by international copyright treaties and conventions.

WORKS IN THE PUBLIC DOMAIN

<u>Date of Work</u>	<u>Protected</u>	<u>Length of Copyright</u>
Created 1-1-1978	When work is fixed in a tangible medium of expression	Life of author + 70 years* (or if corporate author, shorter of 95 years from publication or 120 years from creation.**
Created before 1-1-1978 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law ©	Life + 70 years or 12-31-2047, whichever is greater
Created before 1-1-1978	1-1-78, the effective date of the 1976 Act which eliminated common law ©	Life + 70 years or 12-31-2002, whichever is greater
Published from 1964-1977	When published with notice***	28 years for 1st term; automatic extension of 67 years for 2nd term
Published from 1923-1963	When published with notice	28 years + could be renewed for 47 years (extended by 20 years for a total renewal of 67 years). If not renewed, in public domain.
Published before 1923	In public domain	None

* Term of joint works measured by life of the author living the longest.

** Works for hire, anonymous and pseudonymous works also have this term.

***Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-1978 and 3-1-1989 (effective date of the Berne Convention) retained copyright only if registration was made within five years.

Application Forms. (Available on U.S. Copyright Office website www.loc.gov/copyright)

- ❖ **Written Works Fiction, Non-Fiction, Poetry, Prose, etc.**
 - FL 109 - Registration of Books, Manuscripts, and Speeches
 - FL 106 - Registration of Poetry
 - Circular 62 – Registration of Serials (Newspapers, Magazines, Newsletters, Annuals, Journals, etc.)
 - Form SE – for Serials
 - Form SE/Group – for Registration of a Group of Serials
 - Form TX – for Non-dramatic Literary Works
- ❖ **Performing Arts Lyrics, Music, Plays, Videos, etc.**
 - FL 119 – Dramatic Works: Scripts, Pantomimes & Choreography
 - Circular 45 – Motion Pictures including Video Tapes
 - FL 105 – Registration of Music
 - Circular 50 – Musical Compositions
 - Circular 56a – Musical Compositions and Sound Recordings
 - Form PA – for Works of the Performing Arts
 - Form SR – for Sound Recordings (and Performing Arts)
- ❖ **Visual Arts, Drawing, Photographs, Sculpture, Architectural Works, etc.**
 - FL 115 – Registration of Visual Arts
 - Circular 40 – Visual Arts
 - Circular 40a – Visual Arts Deposit
 - Circular 44 – Cartoons and Comic Strips
 - FL 107 – Registration of Photographs
 - Form VA – for Works of the Visual Arts
 - Form GR/PPh/CON – for Group Registration of Photographs continuation sheet
- ❖ **Computer Software**
 - Circular 61 – Computer Programs
 - Circular 65 – Automated Databases
 - Circular 66 – Online Works
 - Form TX – for Non-dramatic Literary Works
- ❖ **Other Works**
 - Circular 41 – Architectural Works
 - FL 108 – Games
 - Circular 55 – Multimedia Works
 - FL 122 – Recipes
 - Circular 56 – Sound Recordings
 - Form SR – for Sound Recordings
- ❖ **More Copyright Information**
 - FL 100 International Copyright
 - Circular 38a – International Copyright Relations of the U.S.
 - Circular 38b – Highlights of Copyright Amendments Contained in the URAA
 - FL 102 – Fair Use
 - Circular 21 – Reproduction of Copyrighted Works by Educators and Librarians
 - Circular 1b – Limitations on Information Furnished by the Copyright Office
- ❖ **Works NOT Protected by Copyright**
 - FL 103 – Useful Articles
 - Circular 31 – Ideas, Methods, or Systems are NOT Protected by Copyright
 - Circular 32 – Blank Forms and Other Works NOT Protected by Copyright
 - Circular 34 – Names, Titles, Slogans, and Short Phrases NOT Copyrightable

Fees. For most basic copyright registrations, the filing fee is \$30 per registration. Fees vary for group and other registrations.

Useful Copyright Links. U.S. Copyright Office www.loc.gov/copyright