

## 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 This protection is available to both published and unpublished works. Section 106 of 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 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 as described in section 106A of the 1976 Copyright Act. For further information, see Circular 40, Copyright Registration for Works of the Visual Arts. 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. Sections 107 through 121 of the 1976 Copyright Act establish limitations on these rights. In some cases, these limitations are specified exemptions from copyright liability. One major limitation is the doctrine of "fair use," which is given a statutory basis in section 107 of the 1976 Copyright Act. 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. For further information about the limitations of any of these rights, consult the copyright law or write to the Copyright Office.

### **Who Can Claim Copyright?**

Copyright protection subsists from the time the work is created in fixed form. 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. In the case of works made for hire, the employer and not the employee is considered to be the author. Section 101 of the copyright law 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
- 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.

### Two General Principles

- Mere ownership of a book, manuscript, painting, or any other copy or phonorecord does not give the possessor the copyright. The law provides that transfer of ownership of any material object that embodies a protected work does not of itself convey any rights in the copyright.
- Minors may claim copyright, but state laws may regulate the business dealings involving copyrights owned by minors. For information on relevant state laws, consult an attorney.

### Copyright and National Origin of the Work

Copyright protection is available for all unpublished works, regardless of the nationality or domicile of the author. Published works are eligible for copyright protection in the United States if any one of the following conditions is met:

- On the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a treaty party, or is a stateless person wherever that person may be domiciled; or
- The work is first published in the United States or in a foreign nation that, on the date of first publication, is a treaty party. For purposes of this condition, a work that is published in the United States or a treaty party within 30 days after publication in a foreign nation that is not a treaty party shall be considered to be first published in the
- United States or such treaty party, as the case may be; or
- The work is a sound recording that was first fixed in a treaty party; or
- The work is a pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party; or

- The work is first published by the United Nations or any of its specialized agencies, or by the Organization of American States; or
- The work is a foreign work that was in the public domain in the United States prior to 1996 and its copyright was restored under the Uruguay Round Agreements Act (URAA). See Circular 38b, Highlights of Copyright Amendments Contained in the Uruguay Round Agreements Act (URAA-GATT), for further information.
- The work comes within the scope of a Presidential proclamation.

### **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:

- 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
- 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.”

### **How to Secure a 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. There are, however, certain definite advantages to registration. See “Copyright Registration” on page 7.

Copyright is secured automatically when the work is created, and a work is “created” when it is fixed in a copy or phonorecord for the first time. “Copies” are material objects from which a work can be read or visually perceived either directly or with the aid of a machine or device, such as books, manuscripts, sheet music, film, videotape, or microfilm. “Phonorecords” are material objects embodying fixations of sounds (excluding, by statutory definition, motion picture soundtracks), such as cassette tapes, CDs, or vinyl disks. Thus, for example, a song (the “work”) can be fixed in sheet music (“copies”) or in phonograph disks (“phonorecords”), or both. If a work is prepared over a period of time, the part of the work that is fixed on a particular date constitutes the created work as of that date.

### **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 five 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 three 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, go to the U. S. Customs and Border Protection website at HYPERLINK "<http://www.cbp.gov/xp/cgov/import>" [www.cbp.gov/xp/cgov/import](http://www.cbp.gov/xp/cgov/import). Click on "Intellectual Property Rights."

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.

**For additional information on copyrights, please visit:**

<http://www.copyright.gov/>

<http://topics.law.cornell.edu/wex/Copyright>

<http://www4.law.cornell.edu/uscode/17/>