

# Copyright Basics

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## What is Copyright?

Did you know that whenever you write a poem or story or even a paper for your class, or a drawing or other artwork, you automatically own the copyright to it. Copyright is a form of protection given to the authors or creators of "original works of authorship," including literary, dramatic, musical, artistic and other intellectual works. What that means is that, as the author of the work, you alone have the right to do any of the following or to let others do any of the following:

- make copies of your work;
- distribute copies of your work;
- perform your work publicly (such as for plays, film, dances or music);
- display your work publicly (such as for artwork, or stills from audiovisual works, or any material used on the Internet or television); and
- make "[derivative works](#)" (including making modifications, adaptations or other new uses of a work, or translating the work to another media).

In general, it is illegal for anyone to do any of the things listed above with a work created by you without your [permission](#), but there are some exceptions and limitations to your rights as a [copyright holder](#). One major limitation is the doctrine of "[Fair Use](#)," discussed below.

Copyright law in the United States is embodied in federal laws enacted by Congress. The current copyright law, the Copyright Act of 1976 (as amended), is codified in Title 17 of the U.S. Code.

## Why Should I Care About Copyright?

When you create something, aren't you proud of your work when you spend a lot of time and energy creating it? How about that social studies report you finally finished, that poem for your Mom that made her smile, that cool logo you came up with for your soccer team, the great song you wrote for the school play, or even your journal that you don't "have" to do but you enjoy it so much and it's special to you? Well, all these are your creations and you'd probably be pretty upset if someone just copied any of them without your permission. That's where copyright comes in. Copyright law gives you a set of rights that prevents other people from copying your work and doing other things with your work that you may not like.

As the creator of your work, you should have the right to control what people can and cannot do with your work. In the United States - one of the world's biggest sources of creative works like movies, television shows, books, computer games, etc. -- this right to control your work has actually turned into big business, but that's what allows all the creative people around us to get paid for coming up with all the wonderful songs, shows, books, painting, movies and other great works that we enjoy. Just think of all the cool songs your favorite band wrote, the great books you loved reading, the plays, movies and television shows you love to watch again and again. These talented musicians, authors, illustrators and screenwriters deserve our respect and appreciation - and they deserve to make a living from the hard work they put into their creative works -- otherwise most of them wouldn't be able to produce as many (or any) of the songs, books, plays, movies and TV shows that you like. That's what copyright is all about. It reflects our appreciation for all the hard work that goes into creating "original works of authorship" and respect for the right of the creator of that work to control what people can and cannot do with it.

## Which Works Are Protected by Copyright?

Copyright protects "original works of authorship" that are Fixed in "a tangible form of expression." The fixed form does not have to be directly perceptible so long as it can be communicated with the aid of a machine or other device. Copyrightable works fall into the following categories:

- literary works (which includes computer software);
- 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.

## Which Works Are Not Protected by Copyright?

Not everything is protected by copyright law. The following are categories of things not protected:

- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, (but written or recorded descriptions, explanations, or illustrations of such things are protected copyright);
- Titles, names, short phrases, and slogans; mere listings of ingredients or contents (but some titles and words might be protected under trademark law if their use is associated with a particular product or service);
- Works that are not fixed in a tangible form of expression, such as an improvised speech or performance that is not written down or otherwise recorded;
- Works consisting entirely of information that is commonly available and contains no originality (for example, standard calendars, standard measures and rulers, lists or

- tables compiled from public documents or other common sources); and
- Works by the US government.

## Who Owns the Copyright in a Work?

The copyright in a work of authorship immediately becomes the property of the author who created it at the moment it is put into fixed form. No one but the author can claim copyright to the work, unless the author grants rights to others in a written agreement (such as to the author's publisher or record company). Usually, you can tell who the author of a work is -- the person who created it. But sometimes, it is not quite that easy.

### Works made for hire

Works made for hire (a work "[made for hire](#)" by an employee and certain kinds of commissioned works) are considered to be authored by the employer or the commissioning party. So if your boss asks you to write a report as part of your job, the company you work for gets all the copyright protection that would otherwise have been available to you.

### Two or more authors

When two or more people create a work together, each of them is an author: they are called "joint authors" and the work is called a "joint work." Joint authors are co-owners of the copyright in the work, unless they agree otherwise. For instance if your class paints a big painting or mural together, each of the students who painted part of it is a joint author and a copyright owner.

## What is Copyright Infringement?

Anyone who exploits any of the exclusive rights of copyright without the copyright owner's permission commits copyright infringement. If a lawsuit is brought in a court, the infringer will have to pay the copyright owner the amount of money the infringer made from using the work or that the owner would have made if the infringement had not

happened. If the copyright is registered with the U.S. Copyright Office, the infringer may also have to pay copyright owner what's called statutory damages -- an amount set by the judge that will usually be higher. In addition, an infringer may be found guilty on criminal charges and have to pay criminal penalties. Moreover, the infringer will also be stopped from making any further use of the work.

### Proving Infringement

In order for a court to determine that a copyright in a work has been infringed upon it must find that: (1) the infringing work is "substantially similar" to the copyrighted work, and (2) the alleged infringer had access to the copyrighted work -- meaning they actually saw it or heard it. There are no clear rules for deciding when "substantial similarity" exists between two works. Courts look for similarities in appearance, sound, words, format, layout, sequence, and other elements of the works.

### Fair Use

The exclusive rights of the copyright owner are not unlimited. The copyright law establishes some limitations on these rights. One of the most important limitations on the exclusive rights is the doctrine of "Fair Use." The "Fair Use" doctrine allows limited copying of copyrighted works for educational and research purposes. The copyright law provides that reproduction "for purposes such as criticism, news reporting, teaching (including multiple copies for classroom use), scholarship, or research" is not an infringement of copyright. The law lists the following factors, which courts must consider together in determining whether a particular use of a copyrighted work is a permitted "Fair Use," or is instead an infringement of the copyright:

- the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes: the noncommercial educational use is more likely to be a fair use;
- the nature of the copyrighted work: the more factual and less creative the work, the more likely it will be fair use;
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole: the more taken the less likely to be fair use; and
- the effect of the use upon the potential market for or value of the copyrighted work: in other words, is the use taking away from the

copyright owner money that she might have been making from the work.

No case will be decided on just one of these factors. Courts are supposed to look at all of the factors and balance them together to see whether more factors weigh in favor of finding fair use. Courts may consider some factors more important than others in a particular case.

### When Do I Need Permission to Copy?

Unless you are absolutely sure, relying on the doctrine of "[Fair Use](#)" to avoid seeking [Permission](#) to copy a work is risky. Despite what you may have heard, there are no set rules about what kind of use is "fair" and what is "infringing." For example, using less than a certain number of words from an author's work does not automatically constitute fair use. Courts apply the four factors on a case-by-case basis, and one court's interpretation of the factors could easily differ from another's. Thus, it is often impossible to predict whether or not a court would find any given unauthorized use to be "fair." The best course of action is simply to seek permission for all copied material you intend to use.

To obtain permission, you must determine who is the copyright owner of the material you intend to use, contact the owner, obtain permission to use the work in the territory and format you intend, and -- in some cases -- pay the owner a fee. Permission fees are negotiable and will vary depending on the amount and nature of the material you intend to use. If the use is not commercial -- meaning no one is trying to make money from it (such as a school play), then you may be able to get the rights for free. The publisher or distributor should be able to provide you with ownership information or even obtain and provide the permission. The records of the Copyright Office, if kept up to date, should tell you who owns the copyright. These records are open to the public, and the Copyright Office will search its records on request for an hourly fee.

## How Do I Obtain Copyright Protection?

Beyond creating a copyrightable work, an author need do little else to gain copyright protection. Neither publication, nor registration with the Copyright Office, is required today to secure copyright.

### Copyright Exists Automatically Upon Creation

Copyright exists immediately and automatically when the work is created, that is, when it is fixed in a tangible copy for the first time. A "copy" is a 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. A song can be fixed in sheet music (a "copy") or in a CD, or both.

### Notice of Copyright

The use of a copyright notice has not been required under U.S. law since March 1, 1989. Prior to that date, U.S. law did require notice to obtain copyright protection, and the use of notice is still relevant to the copyright status of some older works. Use of notice is still important, however, because it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year that it was first sold or distributed to the public.

### Form of Notice

The notice for visually perceptible copies (like books and posters) should contain all of these items:

The symbol © (the letter "C" in a circle), or the word "Copyright" or the abbreviation "Copr.";

The year of first publication of the work; and

The name of the copyright owner.

Example: © 2001 John Doe

## When And How Do I Register a Copyright ?

Registration of a copyright with the Copyright Office creates a public record of the basic facts of a particular copyright. Registration may be made any time before the term of copyright expires. Registration is not needed for copyright protection, but there are many good reasons to do so.

- Registration establishes a public record of the copyright.
- Registration is necessary before an infringement lawsuit may be brought.
- If registration is made within 3 months after selling or distributing the work to the public or prior to an infringement of the work, a copyright owner will be eligible for Statutory Damages if he or she sues for infringement and wins.

Please see the [Registration page](#) for information on how to register a copyright.

### Effective Date Of Registration

A copyright registration is effective on the date the Copyright Office receives all the required items in acceptable form, no matter how long it the office takes to process the application and mail the certificate of registration.

### **How Long Does Copyright Protection Last?**

Copyrights do not last forever, but they do last a pretty long time. Under the current laws, copyright protection starts from the moment of creation of the work and continues until 70 years after the death of the author or artist. That means that if someone who is 15 in the year 2001 writes a story that year and dies when he is 85 in the year 2086, the copyright will not expire until 70 years after 2086 -- in the year 2156, which is 130 years away. When the term of a copyright expires (meaning it's finished), the work falls into what's called the "public domain." When a work is in the public domain anyone can copy it and use it without permission. This is why you can copy artists like Leonardo da Vinci and writers like Shakespeare and music writers like Mozart all you want. In the case of a joint work prepared by two or more authors, the term of copyright 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 created when prior copyright laws were in effect had shorter terms. Under the law in effect before 1978, copyright was secured either on the date a work was publicly distributed or on the date of registration (if the work was not publicly distributed). In either case, the copyright lasted for a first term of 28 years. During the last (28th) year of the first term, the copyright was eligible for renewal for another 28 years by filing with the Copyright Office. The terms of many earlier copyrights were extended by later laws, and you cannot assume that any work is in the public domain unless it was first published before 1923.