

An Introduction to Copyright Law

Copyright protection, which is rooted in the U.S. Constitution, seeks to promote creativity by protecting, for a limited time, the expression of ideas. Copyright protection exists in original works of authorship fixed in any tangible medium of expression. The types of authorship protected include:

- literary, musical, and dramatic works
- pictorial, graphic, and sculptural works
- sound recordings
- computer programs
- pantomimes and choreographic works
- motion pictures and other audiovisual works
- architectural works

Copyright protection generally does not extend to single words or short phrases (such as names and titles), ideas, systems, processes, or facts. Some of these may be protected under trademark (titles, product names) or patent law (inventions).

How is a Copyright Secured?

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 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. There are, however, definite advantages to taking an additional step and registering your copyright with the U.S. Copyright Office.

How is Copyright Protection Obtained?

Copyright protection attaches at the moment an original work, or that portion of a work qualifying as original expression, is "fixed" in a tangible medium of expression. In other words, as soon as an original story is written onto paper, or an original software program is saved on a computer, or an original movie is recorded onto film, the work is protected under copyright law.

Who Owns a Copyright?

Ownership of a copyright is held by the author of the work. Where a work is co-authored by two or more people, the authors share co-ownership of the copyright. Under the "work for hire" doctrine, for many types of works, an employer is considered the copyright owner in a work created by an employee acting within the scope of his or her employment. However, a party who is independently contracted to create a work is considered the author of the work, absent a written agreement to the contrary. Any assignment of the rights held by a copyright owner to a third party must be in writing and should be registered with the Copyright Office.

What Rights Are Granted Under Copyright Protection?

The owner of a copyright has the exclusive right to reproduce its work, to distribute the copies, to publicly perform and display the work, and to create derivative works. The copyright owner also may authorize, or "license," someone else to do these things.

What is the Purpose of Registration?

Only authors who have registered their works with the Copyright Office may file a lawsuit for copyright infringement. The work need not be registered at the time of the infringement so long as it is registered at the time the lawsuit is filed. Nonetheless, early registration is important because authors who register their works prior to infringement, or within three months of publication of the work if infringement occurs within the first three months of the publication, may be entitled to statutory damages and attorneys' fees. A work is generally considered published at the moment copies of the work are distributed to the public. A public performance or display of a work generally does not in itself constitute publication.

Registration also establishes a public record of the work and places all others on constructive notice of the copyright. In addition, registration permits the owner to file its work with U.S. Customs to prevent the importation of infringing copies of the work. A work may be registered by completing the appropriate application form and sending two copies of the work, along with a \$30 registration fee, to the Copyright Office.



JOHNSON LEGAL PLLC

12545 White Drive
Fairfax, Virginia
Tel: (202) 445-2000
Fax: (888) 492-1303
www.LGJlegal.com

What is Copyright Infringement?

Subject to certain limitations, any act of copying, distributing, publicly performing or displaying, or creating a derivative of a copyrighted work without the author's consent constitutes copyright infringement. It is often difficult to prove direct copying, so the copyright owner must generally establish that the alleged infringer had access to its work, and that the two works are "substantially similar." Once these two factors are established, the alleged infringer has the burden of proving that its work was independently created.

Copyright does not prohibit copying of the basic ideas contained within a work, only the original expression of such ideas. Moreover, copyright protection does not extend to facts, historical events, or other matters in the public domain.

Under the "fair use" doctrine, there is no liability for unauthorized copying of a portion of a copyrighted work for so-called "fair" purposes, such as criticism, comment, news reporting, teaching or research. Several factors determine whether a given use is fair, such as the purpose of the use, the nature of the work, the amount used in proportion to the work as a whole, and potential market effects.

A copyright infringer may be subject to an injunction against future infringement, impounding and destruction of all infringing reproductions, the actual damages suffered by the copyright owner, attorneys' fees and costs, and loss of its profits. If the work has been properly and timely registered prior to infringement, the copyright owner may seek statutory damages. Moreover, an infringer may also be subject to criminal penalties.

What Purpose Does Copyright Notice Serve?

Notice is no longer required in order to claim a right in a copyrighted work. Prior to 1978, failure to place proper notice could result in the work falling into the public domain. Although no longer required, displaying copyright notice is advisable in order to alert others that the copyright owner intends to protect its work.

Furthermore, use of a copyright notice may help to thwart a claim that the infringement was "innocent." An innocent infringer may not be liable for actual or statutory damages for conduct occurring prior to receiving actual notice of the copyright.

The copyright notice may be placed on a work regardless of whether or not it is registered.

Why is Copyright Law Important?

In this era of digital communications, the threat of copyright infringement has never been greater. Copyrighted works can now be perfectly duplicated and distributed worldwide over the Internet virtually without cost. If copyright owners do not take full advantage of the protections afforded to them, they risk losing their ability to profit from their creative investments. Not only will this deprive individual authors from the benefit of their work, it will deprive all of society by discouraging future artists and authors from investing the time and effort necessary to create their works.

How Long Does Copyright Protection Last?

The duration of copyright protection can be a complex issue due to numerous changes in the law over the years. For works created on or after January 1, 1978, the general rule is that copyright protection exists during the author's life plus an additional 70 years following the author's death. If the work is co-authored, the term of protection lasts until 70 years after the death of the last surviving author. For works made for hire, and for anonymous and pseudonymous works, the duration of copyright protection is 95 years from the date of publication, or 120 from the date of creation, whichever is shorter. Different rules apply to works created before 1978.

Copyright notice consists of the following elements:

- The symbol ©, or the word "Copyright," or the abbreviation "Copyr."
- The year of first publication
- The name of the copyright owner, or a recognizable abbreviation

Can I Transfer My Copyright to Somebody Else?

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.

Paper Copyright Forms:

TX – Literary Works
VA – Visual Arts
SE – Single Serials
PA – Performing Arts
SR – Sound Recordings
RE – Renewals

Website: copyright.gov