

# COPYRIGHT FACT SHEET

## 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 This protection is available to both published and unpublished works.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 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*.

## 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

## 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 BY COPYRIGHT?

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

1. 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)
2. Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents
3. Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration
4. 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)

# HOW TO SECURE A COPYRIGHT

## Copyright Secured Automatically upon Creation

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. "Phonorecords" are material objects embodying fixations of sounds (excluding, by statutory definition, motion picture soundtracks), such as cassette tapes, CDs, or LPs. Thus, for example, a song (the "work") can be fixed in sheet music ("copies") or in phonograph disks ("phonorecords"), or both.

## PUBLICATION

Publication is no longer the key to obtaining federal copyright as it was under the Copyright Act of 1909. However, publication remains important to copyright owners.

The 1976 Copyright Act defines publication as follows:

"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.

When a work is published, it may bear a notice of copyright to identify the year of publication and the name of the copyright owner and to inform the public that the work is protected by copyright. Copies of works published before March 1, 1989, must bear the notice or risk loss of copyright protection.

## NOTICE OF COPYRIGHT

The use of a copyright notice is no longer required under U. S. law, although it is often beneficial. Because prior law did contain such a requirement, however, the use of notice is still relevant to the copyright status of older works.

Notice was required under the 1976 Copyright Act. This requirement was eliminated when the United States adhered to the Berne Convention, effective March 1, 1989.

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.

Innocent infringement occurs when the infringer did not realize that the work was protected.

### **Form of Notice for Visually Perceptible Copies**

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."; and
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: © 2002 John Doe

## § 107. Limitations on exclusive rights: FAIR USE

The fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include —

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the 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 fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

In determining whether fair use should apply, these factors look at the purpose for which the copyrighted work is being used:

- Is the work primarily being used for profit or for a non-profit purpose? Preference will be granted to works that were created for non-profit educational purposes.
- Is the new work is for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research? If so, it will be more likely determined to be fair use of copyrighted material.
- Is the new work merely a copy of the original, or does it add something new, with a further purpose or different character?
- Is the copyrighted work something that deserves legal copyright protection?
- Has the new work taken more from the copyrighted work than is necessary? The quantity, as well as the quality and importance, of the copied material must be considered. No more than is necessary should be taken from a copyrighted work.
- What is the extent of harm to the market or potential market of the original work caused by the infringement?

# THE LAW OF PUBLIC DOMAIN

The public domain is that group of works that are not protected by copyright. They are free to use without permission.

Works that are not eligible for copyright protection include: ideas, facts, titles, names, short phrases, procedures, processes, systems, concepts, principles or blank forms.

Federal documents and publications are not copyrighted, and therefore are considered to be in the public domain.

## Expired Copyrights

The public domain also contains all works for which the statutory copyright period has expired. Copyrights have expired on all United States works registered or published prior to 1923. As a result, all such works have entered into the public domain.

A work that is created on or after January 1, 1978 is ordinarily given a term enduring for the author's life, plus an additional 70 years after the author's death. For works made for hire, the duration of copyright will be 95 years from publication or 120 years from creation, whichever is shorter.

Works that were created but not published or registered for copyright before January 1, 1978, will generally be computed for copyright duration purposes 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.

Under the law in effect before 1978, copyright was secured either on the date a work was published or on the date of registration if the work was registered in unpublished form. In either case, the copyright endured for a first term of 28 years from the date it was secured. During the last (28th) year of the first term, the copyright was eligible for a second renewal term of an additional 28 years. If no application was filed for renewal, the work would enter the public domain after the initial 28 year term.

The current copyright law has extended the renewal term from 28 to 67 years for copyrights that existed as of January 1, 1978, making these works eligible for a total term of protection of 95 years. If a work was published between 1923 to 1963, the copyright owner was required to have applied for a renewal term with the Copyright office. If they did not, the copyright expired and the work entered into the public domain. If they did apply for renewal, these works will have a 95

year copyright term and hence will enter into the public domain no sooner than 2018 (95 years from 1923). If the work was published between 1964 to 1977, there is no need to file for a renewal, and these works will automatically have a 95 year term.

## **INFRINGEMENT**

Infringement occurs whenever somebody exercises any of the rights reserved exclusively for the copyright owner without authorization.

Infringement need not be intentional.

Remedies include preliminary and permanent injunctive relief, actual damages, profits above and beyond actual damages, statutory damages, attorney's fees and costs.

Criminal prosecutions are possible for willful violations accompanied by purposes of commercial advantage or private financial gain.

**ALWAYS ASK FOR PERMISSION FROM THE  
COPYRIGHT OWNER BEFORE USING  
COPYRIGHTED MATERIAL!**