

COPYRIGHT BASICS

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WHAT DETERMINES WHO IS THE COPYRIGHT HOLDER?

The copyright holder is the person who creates an "original work of authorship — i.e. puts into physical form literary, artistic, dramatic, musical, and other literary forms. By law, the copyright holder has the right to determine how her/his work is used.

The copyright holder can:

- make copies of the work
- distribute copies of the work
- perform the work publicly (plays, film, dances, music)
- display the work publicly (artwork, stills from audiovisual, material used on the internet or television)
- make "derivative works" (making modifications, adaptations, or other new uses of the work; translating the work to another media

Except in specific uses, such as Fair Use, it is illegal for anyone to do any of the above things without your permission.

FAIR USE 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
- 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

WHAT SPECIFIC WORKS ARE PROTECTED?

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:

- 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
- architectural works

WHAT KINDS OF THINGS ARE NOT PROTECTED

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)
- Works by the US government

WHO OWNS THE COPYRIGHT IN A WORK?

The copyright in a work immediately becomes the property of the person who created it at the moment it is put into fixed form. No one but the creator can claim copyright to the work, unless the creator grants rights to others in a written agreement.

The use of a copyright notice has not been required under US law since March 1, 1989. If it is in fixed form, it is copyrighted.

WHAT IS COPYRIGHT INFRINGEMENT?

Anyone who exploits any of the exclusive rights of copyright without the copyright owner's permission commits copyright infringement. By definition, infringement is the breaking of a law. To put it bluntly, copyright infringement is theft.

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." 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. 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 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.

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.

LINKS — all of these were found by entering "copyright law" into the search engine

<http://www.copyright.gov> [US Copyright Office]

<http://www.csusa.org> [Copyright Society of America]

<http://www.copyrightkids.org> — this is one resource of the Copyright Society of America. I found it very easy to understand because it is geared toward kids.

http://en.m.wikipedia.org/wiki/Copyright_law_of_the_United_States

<https://www.law.cornell.edu/wex/copyright> [Cornell University School of Law]

<http://www.bitlaw.com/copyright/>

<https://www.copyright.com/Services/copyrightoncampus/basics/law.html>