

Business



© Copyright Law 101

Many writers worry their work isn't protected unless they use a copyright symbol or file with the Copyright Office. Learn when and how your work is protected, and exactly what that means.

By Amy Cook

Quick quiz: When does your writing become copyright protected? Is it automatic, or must you register with the U.S. Copyright Office?

Or, say an essay you see on the Internet doesn't have a copyright notice. Is it in the public domain? Are you free to post it on your Web site?

And, just how long does a copyright last?

Know the answers? If you're not sure, read on. These are the copyright questions that confuse writers the most.

Copyright history

The idea of copyright was inserted into the Constitution by the founding fathers "to promote the progress of science and the useful arts by securing for limited times to authors

the exclusive rights to their writings."

A copyright is a form of property, and like any other property, copyrights may be bought and sold, leased, traded and willed. The Copyright Act grants to authors a bundle of exclusive rights over their work. These include:

- reproduction rights
- the right to prepare derivative works (such as a screenplay from a novel)
- the right to distribute the work to the public
- the right to perform or display the work publicly

So many writers utter the incorrect assumption, "My work isn't copyrighted." Under current law, a copyright exists as soon as an original work of authorship is fixed in a tangible medium of expression. You own the copyright to your work as

soon as you write it down or save it on your computer.

You might ask, "What does it take to be 'original?'" A low level of creativity is needed to meet the terms of originality. There needs to be "some spark of creativity," as one judge put it.

Copyright protection applies to both published and unpublished works. A work is published if it has been made available to the public. If you have posted your work on a Web site, or it was printed in your church bulletin, it has been published.

1. What can't be copyrighted?

Titles, names, short phrases, slogans, facts, ideas, procedures and public documents are some of the things that cannot be copyrighted (though trademark or patent protection may be available).

While facts themselves are not copyrightable, the selection, coordination or arrangement of facts in an original way does qualify for copyright. For instance, say you are compiling a restaurant guide. The underlying facts, such as an establishment's name, address and phone number are not copyrightable, but the way in which you organize your guide—by cuisine, location, price, etc.—is protected under law.

2. Copyright notice

As of March 1, 1989, it is no longer necessary to put a copyright notice on your works. This fact is important in two ways. First, writers who forget to add a copyright label to their work do not have to worry that it could fall into the public domain. Remember the mantra: A copyright exists from the moment the work is fixed in a tangible medium of expression. Conversely, when you are doing research, do not assume that if there is no copyright notice on a document that it is free for the taking. The work may or may not be in the public domain. You will have to investigate further.

While not necessary, it's a good idea to use the mark on your work because it identifies you as the owner, the year of creation (or publication as the case may be), and puts others on notice that the work is protected. Infringers would not be able to claim that they didn't know the work was copyrighted. In infringement cases, "innocent" infringers receive substantially less punishment than willful infringers. A proper copyright notification contains three elements: the copyright symbol (or the word "copyright" or "copr."), the name of the author and the year.

3. Copyright duration

So how do you tell if a document is

copyright protected? Works that are in the public domain—because either they were never protected, their copyright expired or they were created by the federal government—can be used without obtaining anyone's permission.

Works created on or after Jan. 1, 1978, are protected for the life of the author plus 70 years. The Sonny Bono Copyright Term Extension Act of 1998 retroactively extended the duration of copyright protection an additional 20 years from the previous "life of author plus 50 years." Creative types are divided over the extension, and the U.S. Supreme Court will decide in spring 2003 whether Congress exceeded its power and violated the "for a limited time" language of the Constitution. Most copyright owners, of course, want to keep their works for as long as possible. Opponents consider the legislation to be corporate welfare (one of the major proponents was the Walt Disney Co., whose early films were reaching the end of their copyright term) and argue that the extension inhibits creativity by depleting the public domain.

Before 1978, the copyright term was 28 years and renewable. There are all sorts of amendments, conventions and treaties that make the status of pre-1978 copyrights murky. Generally, works published between 1923 and 1963 last for 95 years from the date of publication if they were timely renewed. For works published from 1964 to 1977, the copyright lasts for 95 years because those works were automatically renewed by legislation enacted in 1992.

The best way to know a work's status is to conduct a copyright search. You can pay the folks at the Copyright Office an hourly fee to do a search for you; you can do it yourself at the office in Washington; or you can do a limited search on their

Web site, www.loc.gov/copyright.

4. Copyright registration

Although not necessary to protect your work, registering your copyright with the Library of Congress does provide benefits unavailable to those who do not register. To register your work, send the Copyright Office an application form, fee and copies of your work. See the Copyright Office Web site for specifics. Your copyright will be effective on the date the office receives all necessary documents and fees, regardless of how long it takes to process.

5. Infringement

You've written your masterpiece, labeled it with copyright notices, even filed it with the Copyright Office. Then you see a portion of it in someone else's book, article or Web site. What do you do?

There are several remedies available through the courts. The offenders can be ordered to stop infringing (called an injunction), and the infringing materials can be destroyed, with a payment of damages to you. If you have registered your copyright, statutory damages and attorney's fees are available in an infringement suit. Statutory damages range from \$200 to \$30,000 per infringed copyright (not per number of infringements). A willful infringer can be liable for up to \$150,000 and even do jail time. If you have not registered, only actual damages and profits are available. This means you could recover the money you have lost by not being able to sell reprint rights as well as any profit your infringer made selling your work.

6. Fair use

"Fair use" is a defense to a copyright infringement claim. The Copyright Act allows the limited use of a copy-

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righted work for “purposes such as criticism, comment, news reporting, teaching, scholarship or research without the consent of the copyright owner.” Note that this list is illustrative and not exhaustive.

Courts look at four factors to determine fair use:

1. the purpose and character of the use, such as whether it is commercial or not-for-profit
2. the nature and character of the copyrighted work; for instance, less protection is given to factual works
3. the amount used in relation to the copyrighted work as a whole and
4. the effect the use will have on the market for or value of the copyrighted work.

Courts seem to give the most weight to this fourth element: Is the copying complementary to (though not necessarily complimentary!) or a substitute for the original work? For instance, excerpting a small portion of a book in a review further creates a market for the book, whereas copying a novel’s entire themes and characters, or reproducing a nonfiction book’s greatest revelation, would tend to reduce the market for the original.

Copyright is a beautiful thing. It encourages creativity by giving authors a limited monopoly on their writings, and then makes their work available to the public to use in creating new works. Take the founding fathers’ advice: Get out there and “promote the progress of useful arts!” **WD**

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