

# CHAPTER 10: COPYRIGHT LAW FRAMEWORK

## Document Information

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## 10. COPYRIGHT LAW FRAMEWORK

Copyright law protects original works of authorship fixed in tangible media, providing creators with exclusive rights to reproduce, distribute, perform, display, and create derivative works. This protection encourages creativity by ensuring creators can benefit economically from their creative efforts.

### 10.1 Copyrightability Requirements

#### Originality

Original works of authorship represent the fundamental requirement for copyright protection. Originality requires that the work be independently created and possess at least minimal creativity. The creativity threshold is low, requiring only that the work not be entirely mechanical or trivial, but it must represent some creative choice by the author.

#### Fixation

Fixation requires that the work be captured in a sufficiently permanent form to permit perception, reproduction, or communication. This requirement can be satisfied by:

- **Traditional media** like paper or film
- **Digital storage** that allows the work to be perceived with the aid of technology
- **Live broadcasts** if they are simultaneously recorded

#### Categories of Copyrightable Works

The categories of copyrightable works include:

1. **Literary works** - Written expressions including books, articles, computer programs
2. **Musical works** - Songs, compositions, including any accompanying lyrics
3. **Dramatic works** - Plays, scripts, screenplays
4. **Pantomimes and choreographic works** - Dance, mime performances
5. **Pictorial and sculptural works** - Paintings, photographs, sculptures

6. **Motion pictures and audiovisual works** - Films, videos, multimedia presentations

7. **Sound recordings** - Fixed sounds (distinct from musical works)

8. **Architectural works** - Building designs and constructed buildings

These categories are broadly interpreted to encompass new forms of creative expression as technology evolves.

### **Compilations and Derivative Works**

**Compilations** involve the selection, coordination, or arrangement of preexisting materials and can receive copyright protection for their original elements. Examples include:

- Databases with creative selection criteria
- Anthologies with creative organization
- Phone directories (if creatively arranged)

**Derivative works** involve transformation or adaptation of existing works. Protection extends only to the new creative elements, not the underlying materials. Examples include:

- Translations of literary works
- Movie adaptations of books
- Arrangements of musical compositions

### **Idea-Expression Dichotomy**

The idea-expression dichotomy limits copyright protection to expressions of ideas rather than the ideas themselves. This principle ensures that copyright does not create monopolies over:

- **Concepts and methods** that should remain in the public domain
- **Historical facts** and news events
- **Scientific principles** and mathematical formulas
- **Systems and processes** for accomplishing tasks

The distinction can be challenging to apply, particularly for functional works or works with limited ways of expression.

## **10.2 Rights and Limitations**

### **Exclusive Rights Bundle**

Copyright grants owners a bundle of exclusive rights that can be exercised separately or together:

#### **Reproduction Right**

- Controls copying of the work in whole or substantial part

- Includes digital copying and temporary copies in computer memory
- Covers derivative copying (substantial similarity)

### **Distribution Right**

- Governs sales, rentals, and other transfers of copies
- Includes digital distribution and online sales
- Subject to first sale doctrine limitations

### **Public Performance Right**

- Controls presentation of works to audiences beyond normal family circle
- Includes live performances, broadcasts, and digital streaming
- Different rules apply to different types of works

### **Public Display Right**

- Governs showing of works in public places
- Includes digital display and online posting
- Limited by fair use and other exceptions

### **Derivative Work Right**

- Covers adaptations, translations, and transformations
- Includes sequels, prequels, and substantial modifications
- Must involve more than trivial changes

### **First Sale Doctrine**

The first sale doctrine limits the distribution right by allowing purchasers of lawfully made copies to:

- **Resell** their copies without permission
- **Lend** copies to others (with some exceptions)
- **Dispose of** copies as they choose

### **Important Limitations:**

- Does not extend to unauthorized reproductions
- Does not permit public performances or displays
- Special rules apply to computer software and sound recordings
- Does not apply to digital transmissions or streaming

### **Fair Use Analysis**

Fair use provides the most important limitation on copyright rights, permitting certain uses without authorization when they serve purposes such as:

- Criticism and comment
- News reporting
- Teaching and scholarship
- Research and commentary
- Parody and satire

#### **Four-Factor Analysis:**

1. **Purpose and character of use** (commercial vs. educational, transformative nature)
2. **Nature of copyrighted work** (factual vs. creative, published vs. unpublished)
3. **Amount and substantiality** of portion used
4. **Effect on market** for the original work

#### **Transformative Use**

Transformative use has become increasingly important in fair use analysis. Courts focus on whether the new work:

- **Adds something new** with further purpose or different character
- **Alters the original** with new expression, meaning, or message
- **Serves a different function** than the original work

Transformative uses are more likely to be considered fair use, even when they involve:

- Commercial purposes
- Substantial portions of the original work
- Creative rather than factual works

#### **Educational Uses**

Educational uses receive special consideration through:

#### **Specific Exemptions:**

- **Classroom performances** and displays for instructional purposes
- **TEACH Act** provisions for distance learning
- **Library exemptions** for preservation and research
- **Face-to-face teaching** exceptions

#### **Fair Use Considerations:**

- Educational purpose favors fair use
- Non-profit nature supports fair use
- Must still consider all four factors
- Commercial educational use receives less protection

### 10.3 Digital Copyright Issues

#### Digital Millennium Copyright Act (DMCA)

The DMCA addresses copyright issues in the digital environment through two main components:

**Safe Harbor Provisions** Protect qualifying service providers from liability for user-generated infringing content if they:

- Adopt policies for terminating repeat infringers
- Accommodate standard technical measures
- Respond promptly to takedown notices
- Meet other specific requirements

**Anti-Circumvention Provisions** Prohibit bypassing technological protection measures (TPMs) that control access to copyrighted works, creating liability for:

- Circumventing access controls
- Trafficking in circumvention tools
- Providing circumvention services

#### Notice-and-Takedown System

The notice-and-takedown system allows copyright owners to request removal of infringing content through a structured process:

##### Takedown Notice Requirements:

- Identification of copyrighted work
- Identification of infringing material
- Contact information for complainant
- Good faith belief statement
- Accuracy statement under penalty of perjury
- Physical or electronic signature

##### Service Provider Obligations:

- Remove or disable access to material upon receiving compliant notice

- Notify user of takedown action
- Restore material upon receiving valid counter-notice
- Maintain records of notices received

### **Counter-Notice Process:**

- User can file counter-notice claiming material was wrongly removed
- Must include identification, contact information, and good faith statement
- Service provider must restore material unless copyright owner files lawsuit

### **Technological Protection Measures (TPMs)**

TPMs receive special protection under DMCA anti-circumvention provisions:

**Access Controls** - Technologies that require authorization to access works **Copy Controls** - Technologies that prevent unauthorized copying

### **Exemptions and Limitations:**

- Reverse engineering for interoperability
- Security research under certain conditions
- Law enforcement and intelligence activities
- Certain educational and library uses

### **Digital Rights Management (DRM)**

DRM systems implement technological protection measures to control how digital content can be:

- **Accessed** by users
- **Copied** for backup or sharing
- **Used** across different devices
- **Modified** or adapted

### **Benefits and Concerns:**

- **Benefits:** Protects copyright owners' interests, enables new business models
  - **Concerns:** May restrict legitimate uses, raise privacy issues, limit interoperability
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## **Copyright Duration and Termination**

### **Current Duration Rules**

- **Individual authors:** Life plus 70 years
- **Corporate works:** 95 years from publication or 120 years from creation (whichever is shorter)

- **Works made for hire:** Same as corporate works
- **Anonymous/pseudonymous works:** Same as corporate works

## Termination Rights

Authors or heirs can reclaim rights transferred to publishers or other parties:

- **Pre-1978 works:** After 56 years from original copyright
- **Post-1978 works:** After 35 years from transfer
- **Specific procedures** must be followed
- **Cannot be waived** in advance

## Fair Use Guidelines

### Educational Fair Use (Four Factors)

1. **Purpose:** Educational, non-profit use favors fair use
2. **Nature:** Factual works more likely fair use than creative works
3. **Amount:** Small portions more likely fair use
4. **Market Effect:** No negative impact on original work's market

### Parody Protection

- **Must target the original work** being parodied
- **Cannot merely use work as vehicle** for unrelated commentary
- **Amount used must be reasonable** for parodic purpose
- **Commercial nature doesn't automatically preclude** fair use

## Transformative Use Examples

### Likely Fair Use:

- Search engine thumbnails
- Academic criticism with quotations
- News reporting with excerpts
- Parody that comments on original

### Less Likely Fair Use:

- Wholesale copying for commercial use
- Republishing substantial portions
- Creating substitute for original work

- Harming market for original
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## Digital Copyright Compliance

### For Content Creators

1. **Register important works** with Copyright Office
2. **Use proper copyright notices** on published works
3. **Maintain ownership records** and licensing agreements
4. **Monitor for infringement** using available tools
5. **Understand fair use limitations** on enforcement

### For Platform Operators

1. **Implement DMCA-compliant** takedown procedures
2. **Adopt repeat infringer policies** as required
3. **Provide proper agent information** to Copyright Office
4. **Respond promptly** to valid takedown notices
5. **Maintain takedown records** as required by law

### For Users and Educators

1. **Understand fair use principles** and limitations
2. **Seek permission** when use may not be fair
3. **Use Creative Commons** and public domain materials when possible
4. **Attribute sources** properly even for fair use
5. **Stay current** on digital copyright developments

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