

COPYRIGHT BASICS

What Is Copyright?

Copyright is a form of protection provided by the laws of the United States to the authors of "original works of authorship." This protection is available to both published and unpublished works.

Copyright gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- reproduce the work in copies or phonorecords
- prepare derivative works based upon the work
- distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending
- perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works
- display the 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
- perform the work publicly (in the case of sound recordings*) by means of a digital audio transmission

Works are copyrighted from moment of its creation and is ordinarily given a term enduring for the author's life plus an additional 70 years after the author's death.

The notice for visually perceptible copies should contain all the following three elements

Example: © 2020 John Doe

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

What Is Not Protected by Copyright?

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

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

What is Copyright Infringement?

Anyone who exploits any of the exclusive rights of copyright without the copyright owner's permission commits copyright infringement. If a lawsuit is brought in a court, the infringer will have to pay the copyright owner the amount of money the infringer made from using the work or that the owner would have made if the infringement had not happened. If the copyright is registered with the U.S. Copyright Office, the infringer may also have to pay copyright owner what's called statutory damages -- an amount set by the judge that will usually be higher. In addition, an infringer may be found guilty on criminal charges and have to pay criminal penalties. Moreover, the infringer will also be stopped from making any further use of the work.

COPYRIGHT BASICS

Proving Infringement

In order for a court to determine that a copyright in a work has been infringed upon it must find that:

- (1) the infringing work is "substantially similar" to the copyrighted work, and
- (2) the alleged infringer had access to the copyrighted work -- meaning they actually saw it or heard it.
- (3) Courts look for similarities in appearance, sound, words, format, layout, sequence, and other elements of the works.

Infringement of the copyright:

- the purpose and character of the use, including whether such use is of a commercial nature or
- 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; and
- Is the use taking away from the copyright owner money that the she might have been making from the work.

The "poor man's copyright." What is it?

The practice of sending a copy of your own work to yourself is sometimes called a "poor man's copyright." There is no provision in the copyright law regarding any such type of protection, and it is not a substitute for registration.

Is my copyright good in other countries?

The United States has copyright relations with most countries throughout the world, and as a result of these agreements, we honor each other's citizens' copyrights. However, the United States does not have such copyright relationships with every country. For a listing of countries and the nature of their copyright relations with the United States, see Circular 38a, International Copyright Relations of the United States.

Does copyright protect architecture?

Yes. Architectural works became subject to copyright protection on December 1, 1990. The copyright law defines "architectural work" as "the design of a building embodied in any tangible medium of

expression, including a building, architectural plans, or drawings." Copyright protection extends to any architectural work created on or after December 1, 1990. Also, any architectural works that were unconstructed and embodied in unpublished plans or drawings on that date and were constructed by December 31, 2002, are eligible for protection. Architectural designs embodied in buildings constructed prior to December 1, 1990, are not eligible for copyright protection. See Circular 41, Copyright Claims in Architectural Works

Can I get a star named after me and claim copyright to it?

No. There is a lot of misunderstanding about this. Names are not protected by copyright. Publishers of works such as a star registry may register a claim to copyright in the text of the volume [or book] containing the names the registry has assigned to stars, and perhaps the compilation of data; but such a registration would not extend protection to any of the individual star names appearing therein. Copyright registration of such a volume of star names does not confer any official or governmental status on any of the star names included in the volume. For further information on copyright protection and names, see Circular 33, Works Not Protected by Copyright

