

COPYRIGHTS OVERVIEW



LEGAL AND REGULATORY AUTHORITY FOR COPYRIGHTS

Copyrights are regulated in the United States by the United States Copyright Office under the authority of the federal Copyright Act. The Copyright Office website provides legal and regulatory information, as well as procedural guidance, relating to copyright protection.



COPYRIGHTABLE SUBJECT MATTER

Copyrights attach to original works of intellectual and artistic expression in multiple categories, including: books and magazines, photographs, movies, music, software programs, drawings, graphic designs, business plans and charts, websites, paintings, sculpture, fashion, Architecture, and live performances.

Copyright law can also protect a company's data or databases that qualify as compilations. The underlying facts of data that make up a data set are not copyright protectable, but the selection and arrangement of the data can be protected if the compilation meets the required minimum level of originality.

Courts have established that the standard of originality required for copyright protection is low. For example, similar photographs of the same scene are each protected by copyright. In addition, the extent or lack of intellectual effort or creativity is irrelevant.

HOW COPYRIGHTS ARE SECURED AND MAINTAINED

Copyrights arise, by operation of law, immediately on a work being committed to paper, film, computer memory or disk, or other medium. The Copyright Act describes this as "fixed in any tangible medium of expression" (17 U.S.C. § 102). Publication of the work is not required.

Ownership of a copyright automatically vests in the author (or authors) of the work (depending on the type of work, this might be a writer, artist, musician, or programmer) or, if the work qualifies as a work made for hire, the employer of the creator or the commissioning party. To qualify as a work made for hire, the work must be either:

- Created by an employee in the scope of his or her employment.
- Specially commissioned, where: the creator of the work and the commissioning party agree in writing that the work is a work made for hire; and the work falls within one of nine limited statutory categories.

For registered and unregistered works first published on and after March 1, 1989, use of a traditional copyright notice (for example, "Copyright © 2017 McLaughlin, PC") is optional. However, use of the copyright notice is beneficial to discourage infringement and may provide evidentiary advantages in litigation.

REGISTERED AND UNREGISTERED COPYRIGHTS

Copyright registration is accomplished by filing an application with the Copyright Office, paying the specified filing fee and, in most cases, depositing a copy (or excerpt) of the work with the Library of Congress. A registration can be filed through the Electronic Copyright Office.

In practice, copyrights are not always registered by their owners, merely by default or for various good reasons. The registration process can be cumbersome and expensive, especially for businesses with many copyrighted works in certain categories (such as dynamic websites). No general blanket registration process exists (except in limited cases, for example, for serial works, such as newspapers and other periodicals), so each individual work, and each new version and edition, generally must be separately registered.

Furthermore, because registration requires at least partial public disclosure of the work, copyright owners often decide not to register certain kinds of works in the interest of confidentiality and to preserve any independent protection of the work as a trade secret.

A copyright owner must generally register a copyright before bringing a related copyright infringement action in federal court.

TRANSFER OF COPYRIGHT OWNERSHIP

The owner of a copyright can transfer title or grant a security interest in the copyright in a written document signed by the owner, and documents evidencing transfers and grants can be recorded in the Copyright Office.

SCOPE OF COPYRIGHT PROTECTION

The owner of a copyright enjoys certain exclusive rights with respect to the protected work, including the right to: reproduce the work (including to make electronic copies); create adaptations (derivative works) based on the work; distribute copies (by sale or rental); and, display or perform the work publicly. Any or all of these exclusive rights can be individually licensed by the copyright owner on an exclusive or non-exclusive basis.

The duration of copyright protection is limited and varies depending on: the nature of the work; the date, place, and circumstances of its creation; whether and when it was first published; and, whether renewal was available and sought.

For works created on or after January 1, 1978, the term of copyright generally is: 70 years after the author's death, for a work created by a single author and not as a work made for hire; 70 years after the last author's death, for a work of joint authorship that is not a work made for hire; and, for works made for hire, and pseudonymous and anonymous works, the later of 120 years after creation or 95 years after first publication. Copyright protects only original expressions of ideas from unauthorized copying, not the ideas or concepts being expressed (though ideas might be protected as trade secrets or where the idea is embodied in a patentable invention). For example, plot devices in a book generally can be freely appropriated in a second, similar book, if the text of the later book is original. Similarly, even if a new work happens to be similar or identical to an earlier work, there is no copyright infringement unless the earlier work was actually copied by the author of the new work.

COPYRIGHT ENFORCEMENT

A copyright owner has grounds to bring a copyright infringement action in federal district court against a defendant that exercises any of the owner's exclusive rights without permission. A copyright owner must generally register a copyright before bringing a related copyright infringement action in federal court. However, if registration is refused after the application, deposit, and fee are delivered to the Copyright Office, the applicant can still file an infringement action if notice of the action and a copy of the complaint are served on the Register of Copyrights.

Causes of action are also available for:

- **Contributory infringement.** A defendant that causes, induces, or materially contributes to an infringing act, and knew or should have known of an infringement, may be liable for contributory infringement.
- **Vicarious infringement.** A defendant with control over the actions of a direct infringer and a financial stake in the infringement can be charged with vicarious infringement.

The defendant in an infringement action has several affirmative defenses, depending on the facts in the case, including:

- The defendant's work was created independently or without copying protected elements of the plaintiff's work.
- The copying of the plaintiff's work was not substantial.
- A statutory fair use exception applies.
- The defendant did not know or have reason to know that it was infringing. This may result in a reduction of statutory damages, but will be unavailable if the defendant had notice of the plaintiff's copyright.

Judicial remedies that can be awarded for copyright infringement include: injunctive relief (temporary and permanent); actual damages (plaintiff's lost profits and an accounting of defendant's profits); for a copyright that was registered prior to the infringement at issue (or, if a published work, within three months after first publication), statutory damages of between \$750 and \$30,000 for each infringing work (which a court may reduce to \$200 per work upon proof that the infringer was not aware and had no reason to believe he was infringing copyright), or up to \$150,000 for willful infringement; and, attorneys' fees (available along with statutory damages for willful infringement, as above).