



Copyright

©2009 eNotes.com, Inc. or its Licensors. Please see [copyright information](#) at the end of this document.

- [Background](#)
- [Copyrightable Works](#)
- [Copyright Ownership](#)
- [Copyright Infringement](#)
- [Additional Resources](#)
- [Organizations](#)

Background

Definition of Copyright

A [COPYRIGHT](#) is an intangible right granted by [STATUTE](#) to the originator of certain literary or artistic productions, including authors, artists, musicians, composers, and publishers, among others. For a limited period copyright owners are given the exclusive privilege to produce, copy, and distribute their creative works for publication or sale.

Copyright is distinct from other forms of legal protection granted to originators of creative works such as [PATENTS](#), which give inventors exclusive rights over use of their inventions, and [TRADEMARKS](#), which give businesses exclusive rights over words, symbols, and other devices affixed to goods for the purpose of signifying their authenticity to the public. All three types of legal protection comprise an area of law known as intellectual property.

History of Copyright

U. S. copyright law is an outgrowth of English [COMMON LAW](#). When the printing press was created in the fifteenth century, rights were at first granted to printers rather than to authors. The English Common law protected printers' intellectual property rights until 1710, when Parliament passed the Statute of Anne, which conferred upon authors the right to control reproduction of their works after they were published. The right lasted for 28 years, after which an author's work was said to enter the [PUBLIC DOMAIN](#), meaning that anyone could print or distribute the work without obtaining the author's permission or paying the author a royalty for the right to distribute it.

By the late eighteenth century, protecting intellectual property interests was considered an important means of advancing the [PUBLIC INTEREST](#) in both Great Britain and the United States. Granting a [MONOPOLY](#) to the originator of a creative work provided incentive for authors and inventors to make things the public found valuable enough to buy for personal, commercial, and governmental uses. The [PATENT](#) and Copyright Clause, contained in Article I, Section 8, Clause 8 of the U. S. Constitution, recognized the growing importance of protecting intellectual property interests. It empowers Congress to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors exclusive Right to their respective Writings and Discoveries."

Encyclopedia of Everyday Law: Copyright

Congress passed the first copyright statute in 1790 and has substantially revised it five times: in 1831, 1870, 1909, 1976, and 1998. In 1831 musical compositions were granted copyright protection over objections made by opponents who claimed that the such works did not fall within the Constitution's definition of a "writing." In 1870 Congress granted copyright protection to paintings, statues, and other works of fine art. In 1909 copyright owners were given the right to renew a copyright for 28 years beyond the initial 28-year term established by the first statute.

In 1976 Congress brought unpublished works within the ambit of federal copyright law. Prior to 1976, unpublished works were only afforded protection by state common law. The protection was perpetual in nature, meaning that authors could prevent others from copying their works during their lifetimes, and then pass this right on to their heirs. However, once an authorized person published a work, the common law copyright was extinguished, and the only protection afforded was by federal statute. The 1976 act abolished nearly every significant aspect of common law copyright, creating a unified system for both published and unpublished works (see 17 U.S.C.A. section 102[a]). The 1976 act also made U. S. copyright law conform more to international standards, particularly with regard to the duration of copyright protection and the formalities of copyright registration.

In 1998 Congress passed the Digital Millennium Copyright Act (DMCA) to address a number of concerns relating to copyright [INFRINGEMENT](#) in the computer age. The DMCA limited the liability of Internet service providers (ISPs) for copyright infringement by Internet content providers, enabled Internet content providers to require immediate removal of infringing material, and made it illegal to circumvent encryption technologies designed to protect copyrighted works from unauthorized [APPROPRIATION](#). Legal observers expect more intellectual property legislation to follow in the new millennium.

Copyrightable Works

What is Copyrightable

Applicants seeking copyright protection for their works must establish that the works are original and have been reduced to "tangible medium of expression." (see 17 U.S.C.A section 102[a]). The phrase, "tangible medium of expression," means that the work must be reduced to some concrete form, as when something is written on a piece of paper, recorded on an audiotape, captured on a videotape, or stored on a computer disk or hard drive.

"Originality" does not mean "novelty" for the purposes of copyright law. It simply means that the work in question is the work of the person seeking copyright protection and not the creation of a third-party from whom the work was copied. The law allows for old works to be recreated with new themes or characters, adapted to new settings, or updated with fresh data so long as the new variation is something more than trivial and reflects the creator's contribution. However, courts will not sit in judgment of a work's artistic merits or aesthetic qualities.

What is not Copyrightable

Copyright protects the expression of an idea but not the idea itself. Concepts, plots, procedures, processes, systems, methods of operation, principles, and discoveries are thus not copyrightable until they have been reduced to some [TANGIBLE](#) form, no matter how original they might be. Nor is everything that has been reduced to a tangible form eligible for copyright protection. Words, phrases, slogans, blank forms, phone listings, and standard calendars will not receive copyright protection without proof that the originator contributed something new to the work. However, a reproduction of an original copyrighted work constitutes

a violation of copyright law. Thus, one commercial entity may not simply reproduce another entity's phone directory without running afoul of copyright law. But each entity is free to gather the same facts and arrange them in nearly the same manner, so long as both entities invest some original labor.

Copyright Ownership

Registration, Deposit, and Notice

Registration of copyright requires applicants to record the existence of authored works and the identity of their authors with the Copyright Office in the Library of Congress. Copyright deposit involves placing the work in its written, recorded, or other physical form with the same office. Notice of copyright means marking the authored work with the word "Copyright," the abbreviation "Copr.," or the letter "C" in a circle, along with the year of first publication and the name of the copyright owner.

For nearly two centuries after the U. S. Constitution was ratified by the states, several major copyright acts required that applicants register and deposit their works with a federal district court or the Library of Congress before a copyright could be enforceable. The Copyright Act of 1976 eliminated these requirements, giving authors exclusive federal copyright protection from the moment they reduce their work to a tangible medium of expression.

Nonetheless, registration, deposit, and notice still have significant legal and practical consequences. Copyright owners may not sue for infringement unless they have first registered the copyright (see 17 U.S.C.A sections 411, 412). Although deposit is not a pre-condition to bringing a suit for infringement, federal law requires that two copies of a published work be deposited within three months of publication, and failure to deposit a copy after it has been demanded by the Copyright Office is a criminal offense punishable by a fine. Notice provides immediate warning that a work is protected by copyright and may help stave off legal disputes with potential infringers.

Identifying Ownership

The author of an original work is the copyright owner, except in the case of a "work for hire." A work for hire can arise in two situations: (1) when an employee creates a work within the scope of his or her employment; (2) when two parties enter a written agreement designating the work as a work for hire and the work falls within certain categories designated by copyright law. If a work qualifies as a work for hire, the employer owns the copyright and enjoys the same rights of copyright ownership as if the employer had created the work itself. If a work does not qualify as a work for hire, then the employee who authored the work retains copyright ownership and transfer of the copyright can only be accomplished through a written assignment of copyright.

Attributes of Ownership

Copyright affords an author of an original work five exclusive rights: (1) to reproduce or copy the work; (2) to prepare new works that derive from the copyrighted work; (3) to distribute the work to the public by sale or other arrangement; (4) to perform the work publicly; and (5) to display the work publicly. The last three rights are infringed only when violated publicly, that is, before a "substantial number of persons" outside family and friends (see 17 U.S.C.A section 101). The first two rights are infringed whether violated in public or in private. In general, copyright of popular works can be extremely lucrative for the owner, since it includes the right to any profits from dramatizations, abridgements, and translations. It also includes the right to sell, license, or transfer one or more of the exclusive rights afforded by copyright law.

Duration of Ownership

Protection from copyright infringement for works created after 1977 extends throughout the life of the author who created the original work, plus fifty years after the author's death (see 17 U.S.C.A. section 302[a]). When an original work is joint-authored, the copyright expires fifty years after the death of the last surviving author. Copyright is considered [PERSONAL PROPERTY](#) that may be transferred to the author's heirs upon his or her death. For works created prior to 1977, the duration of ownership depends upon the law that was in effect at the time a work was created. In many cases, original works were protected for only 28 years and have long since passed into the public domain, unprotected by U. S. copyright law.

Copyright Infringement

Definition of Infringement

Copyright infringement is the violation of any exclusive right held by the copyright owner. Infringement may be intentional or unintentional. Often called "innocent infringement," unintentional infringement occurs when an author creates an ostensibly new work that later proves to be a mere reproduction of an existing work, though the author was unaware of the identity between the two at the time the copy was made. For example, former Beatle musician George Harrison was guilty of innocent infringement when he released the song "My Sweet Lord," which a court found was the same song as the Chiffons' "He's So Fine," only with different words. The court said that Harrison had "subconsciously" borrowed the Chiffons' unique motif (see *Bright Tunes Music Corp. v. Harrisongs Music, Ltd.*, 420 F.Supp. 177 [S.D.N.Y. 1976]).

Defense to Infringement: Fair Use

Fair use is a judicial doctrine that refers to a use of a copyrighted work that does not violate the exclusive rights of the copyright owner. Examples of fair use include the reproduction of original works for the purpose of criticism, comment, news reporting, teaching, scholarship, or research (see 17 U.S.C.A. section 107). Whether a particular use is "fair" depends on a court's application of the following factors:

(1) the purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for the copyrighted work, including the extent to which the use diminishes the economic value of the work. Courts have ruled that the fair use doctrine allows individuals to use video cassette recorders (VCRs) to tape television shows and movies for home use without fear of being sued for copyright infringement.

However, in a case closely watched by the public, the U. S. Court of Appeals for the Ninth Circuit ruled that the fair use doctrine does not allow an Internet service to store digital audio files of copyrighted sound recordings for downloading by service subscribers who pay no fee to the copyright owners (see *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 [9th Cir. 2001]). Recognizing that the individual subscribers were mostly high school and college students downloading the music for personal consumption, the court still found that the purpose and character of their use was commercial in nature. "Napster users get for free something they would ordinarily have to buy," the court observed. The court said that Napster's service reduced audio CD sales among those students, thereby diminishing both the size of the copyright owners market and the value of the copyrighted work.

Remedies for Infringement

Copyright is valuable to the extent it protects an author's investment in an original work. Infringement directly injures the copyright owner by depriving the owner of the revenue that is generated by the infringer's work and indirectly injures the owner by softening demand for his work. A copyright owner who has been injured by an infringing work may file a law suit requesting one of two types of remedies. First, the owner may ask the court to grant an injunction ordering the offending party from continuing to infringe on the copyright. Or the owner may instead choose to receive [STATUTORY](#) damages for the infringement, which range from as little as \$100 for innocent infringement to as much as \$50,000 for willful infringement.

Willful infringement is also a federal criminal offense, a [MISDEMEANOR](#) punishable by a fine of up to \$10,000 and up to a year in prison (see 17 U.S.C.A. 506[a]). However, the law requires that the prosecution demonstrate that the infringement was willful and that it was for the purpose of "commercial advantage or private financial gain." Mass [PIRACY](#) of sound or motion picture recordings without permission of the copyright owner is a separate criminal offense, punishable by a fine of up to \$250,000 and five years in prison under the Piracy and COUNTERFEITING Amendments Act of 1982 (see 18 U.S.C.A. section 2318).

Additional Resources

American Jurisprudence. West Group, 1998

<http://profs.lp.findlaw.com/copyright/index.html>. FindLaw for Legal Professionals: Copyright Law.

<http://www4.law.cornell.edu/uscode/17/index.text.html>. Title 17 United States Code: Copyrights.

Intellectual Property in a Nutshell: Patents, Trademarks, and Copyright. West Group.

West's Encyclopedia of American Law. West Group, 1998.

Organizations

Intellectual Property Owners Association

1255 23rd St., NW, # 200

Washington, DC 20037 USA

Phone: (202) 466-2396

Fax: (202) 466-2366

URL: www.ipo.org.

Primary Contact: Ronald E. Myrick, President

Recording Industry Association of America

1330 Connecticut Ave., NW, Suite 300

Washington, DC 20036 USA

Phone: (202) 775-0101

Fax: (202) 775-7253

URL: <http://www.riaa.com>

Primary Contact: Hilary B. Rosen, Chief Executive Officer

Encyclopedia of Everyday Law: Copyright

United States Copyright Office, The Library of Congress

101 Independence Avenue, SE

Washington, DC 20559-6000 USA

Phone: (202) 707-3000

Fax: (202) 707-2600

URL: <http://lcweb.loc.gov/copyright>

Primary Contact: Marybeth Peters, Register of Copyright

Copyright Notice

©2009 eNotes.com, Inc.

ALL RIGHTS RESERVED.

No part of this work covered by the copyright hereon may be reproduced or used in any form or by any means graphic, electronic, or mechanical, including photocopying, recording, taping, Web distribution or information storage retrieval systems without the written permission of the publisher.

For complete copyright information, please see the online version of this work:

<http://www.enotes.com/everyday-law-encyclopedia>