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# AN OVERVIEW OF THE UNITED STATES COPYRIGHT SYSTEM

## 1. What is copyright?

Although the term "copyright" is singular, it actually represents five separate fundamental rights which are provided by the laws of the United States exclusively to the copyright owner (or those who are authorized by the copyright owner). Those rights are:

(a) to reproduce the copyrighted work in copies or phonorecords;

(b) to prepare derivative works based upon the copyrighted work;

(c) to distribute copies or phonorecords of the work to the public by sale (or other transfer of ownership), rental, lease or lending;

(d) to perform the copyrighted work publicly (this applies only to literary, musical, dramatic and choreographic works, pantomimes, and motion pictures and other audiovisual works); and

(e) to 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).

Even though the statutes which grant these rights refer to them as "exclusive", there are certain limitations on that exclusivity. For example, the so-called "fair use exception" allows individuals other than the copyright owner to make limited use of a copyrighted work for purposes such as criticism, comment, news reporting, teaching scholarship, or research.

## 2. What type of subject matter is amenable to copyright protection?

According to statute, copyright protection subsists in "original works of authorship fixed in any tangible medium of expression." The two fundamental criteria set out in this phase--originality and fixation in tangible form--constitute the cornerstone of United States copyright law.

## 3. What is excluded from copyright protection?

(a) Ideas, concepts, procedures, processes, devices, systems, methods of operation, principles, or discoveries. (Therefore, copyright does not give an author the right to preclude others from using any ideas or information that may be revealed in the copyrighted work.)

(b) Works of the United States Government.

(c) Words and short phrases (such as names, titles, and slogans).

(d) Listings of ingredients or contents (recipes, for example).

(e) Blank forms (such as time cards, bank checks, address books) which are designed for recording information and do not in themselves convey information).

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(f) Works consisting entirely of information that is common property. (Examples: calendars, tape measures, football schedules)

## 4. What constitutes an "original work of authorship"?

This phrase was intentionally left undefined by the drafters of the copyright statutes. However, it is clear that a work may qualify as an "original work of authorship" even though it lacks novelty, ingenuity, or esthetic merit! Works of authorship include the following categories:

(a) literary works;
(b) musical works, including any accompanying words;
(c) dramatic works, including any accompanying music;
(d) pantomimes and choreographic works;
(e) pictorial, graphic, and sculptural works;
(f) motion pictures and other audiovisual works;
(g) sound recordings; and
(h) architectural works.

These eight categories are merely representative and are not intended to constitute an exhaustive listing of the types of works which the copyright statutes were designed to protect. In other words, just because a work does not fall neatly into one of these categories does not necessarily mean that it will be barred from copyright protection. Moreover, the individual categories are viewed very broadly--for example, the category of "literary works" includes (in addition to the latest novel on the best-seller list) such other types of "literature" as catalogs, telephone directories, and computer programs.

## 5. At what point is a work considered to be fixed in tangible form?

A work is "fixed" if it can be "perceived, reproduced, or otherwise communicated for a period of more than transitory duration," either directly or with the aid of a machine or device. Any form or medium of fixation will suffice, even one which can be perceived only by means of a machine that didn't even exist at the time the copyright statutes were enacted.

## 6. What does an author have to do to obtain copyright protection for his work?

Absolutely nothing! Under the present Copyright Act, copyright protection begins automatically upon creation of a

work, and a work is "created" when it is fixed in a copy or phonorecord for the first time. (Exception: Copyright registration is a precondition to copyright protection only for works published with notice of copyright prior to January 1, 1978. Prior to that date, copyright was generally secured by the act of publication with notice of copyright or by registration of certain unpublished works.) Under present law, registration is not a condition of copyright protection.

### 7. How long does copyright protection last?

In general, the duration of copyright for works created on or after January 1, 1978 is the life of the author plus an additional fifty years. If there is more than one author, the fifty years begins to run at the death of the last surviving author. In the case of a "work for hire", the copyright endures for a term of 75 years from the year of its first publication or 100 years from the year of its creation, whichever expires first. There are also special rules concerning the duration of copyright on anonymous and pseudonymous works.

### 8. What is a "work made for hire"?

(a) A work prepared by an employee within the scope of his or her employment.

(b) A work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, or as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

### 9. Who owns the copyright in a work?

Initially, the copyright is owned by the author of the work, with the authors of a joint work being co-owners. In the case of a work made for hire, the employer or individual who commissioned the work is considered to be the author (and thus the owner) of the work, unless otherwise agreed in writing by the parties. The author(s) of a work have the right to transfer all of any portion of the copyright to another individual, who in turn becomes the copyright owner. Even though a work may have only one author, there may be many copyright owners because any of the rights which make up the copyright may be transferred, owned, and enforced separately.

With regard to collective works, copyright in each separate contribution is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revisions of that collective work, and any later collective work in the same series.

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**10. Does ownership of a material object carry with it ownership of copyright?**

No. For example, an individual who buys an original oil painting does not thereby acquire rights under the copyright--even though he or she owns the painting, the right to make copies and exercise the other rights which make up the copyright remains with the painter in the absence of a specific written conveyance of those rights.

**11. What constitutes publication under the copyright law?**

The Copyright Act defines publication as "the distribution of copies or phonorecords of a work to the public by sale or other transfer or ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not itself constitute publication." It is clear from this definition that there is no publication unless a material object changes hands.

**12. What constitutes copyright notice?**

The current Copyright Act provides that a notice of copyright may be placed on all publicly distributed copies, phonorecords, and sound recordings. The copyright notice is slightly different for visually perceptible copies and phonorecords of sound recordings.

Visually perceptible copies

(a) the symbol © (the letter C in a circle), or the word "Copyright", or the abbreviated "Copr.";

(b) the year of first publication of the work (the year date may be omitted where a pictorial, graphic, or sculptural work is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful articles); and

(c) the name of the copyright owner.

Phonorecords of sound recordings

(a) the symbol P (the letter P in a circle);

(b) the year of first publication of the sound recording; and

(c) the name of the owner of copyright in the sound recording.

**13. Where should the copyright notice be placed?**

The rule with regard to visually perceptible copies is very general: Affix the notice to the copies in "such manner and location as to give reasonable notice" of the copyright claim. In the case of phonorecords, the notice is to be placed on the surface of the record or on the label or container, also with the purpose of giving reasonable notice of the copyright claim.

### 14. What happens if the copyright notice is omitted?

Under current law, the omission of the copyright notice does not result in forfeiture of copyright protection. However, the Copyright Office recommends that the notice be used because "it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication." Furthermore, in the event that a work is infringed, if the work carries a proper notice, the court will not allow a defendant to claim 'innocent infringement'--that is, that he or she did not realize that the work is protected. (A successful innocent infringement claim may result in a reduction in damages that the copyright owner would otherwise receive.) With respect to copies and phonorecords distributed between January 1, 1978 and March 1, 1989, the omission of the copyright notice does not invalidate the copyright in a work if:

(a) the notice has been omitted from only a relatively small number of copies or phonorecords; or

(b) registration for the work has been made before or within 5 years after publication without notice and a reasonable effort is made to add notice to all copies or phonorecords that are distributed to the public in the Untied States after the omission has been discovered; or

(c) the notice has been omitted in violation of the copyright owner's express written requirement that all publicly distributed copies or phonorecords bear the prescribed notice.

Copyright protection is not affected at all if the notice is removed, destroyed, or obliterated without the authorization of the copyright owner.

### 15. Since copyright registration is not usually a requirement for copyright protection, what is the purpose of registration?

The Copyright Office lists the following advantages of copyright registration:

(a) Registration establishes a public record of the copyright claim;

(b) Registration is ordinarily necessary before any infringement suits may be filed in court;

(c) If made before or within 5 years of publication, registration will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate;

(d) If registration is made within 3 months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions.

Otherwise, only an award of actual damages and profits is available to the copyright owner; and

(e) Registration satisfies the requirement that an author deposit two copies of his/her work in the Copyright Office for use in the Library of Congress.

## 16. What is the procedure for registration of copyright?

To register a work, the owner of copyright or of any exclusive right in a work sends the following three elements in the same envelope or package to the Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C.:

(a) A properly completed application form;

(b) A nonrefundable filing fee of $50-$65 for each application; (online registration $35)

(c) A nonreturnable deposit of the work being registered. (Note: The deposit requirements for copyright registration vary depending on the nature of the work and its publication status.)

## 17. What is the mandatory deposit requirement?

Although United States law does not require registration of copyright, the Copyright Act requires the deposit of all works published in the United States with or without notice of copyright. This law requires the copyright owner, within three (3) months after publication of a work in the United States, to deposit in the Copyright Office two copies (or phonorecords) of the work for the use of the Library of Congress. Although the mandatory Library of Congress deposit is entirely separate from the deposit required for copyright registration, the same deposit can be used to satisfy both requirements if it is accompanied by the prescribed application and fee for registration.

(NOTE: All fees quoted became effective on August 1, 2009 and were current as of April 7, 2011, but change periodically.)

**FOR ADDITIONAL INFORMATION:** This brief overview of the United States copyright system attempts to answer in a very abbreviated manner only a few of the most frequently asked questions about copyright. More detailed information can be found at www.copyright.gov. For additional information, faculty and staff of The University of Tennessee are invited to contact the University of Tennessee Research Foundation.

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