

# User-Friendly Guide To Copyright

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## Copyright In General

Copyrights extend to original, creative works of authorship that are established in a physical form. Copyright protects works actually expressed – such as things fixed on paper and film – but does not extend to mere ideas. Common examples include literary works, music, dramatic works, choreography, pictures, graphic and sculptural works, motion pictures, sound recordings, and architectural works. See 17 U.S.C. § 106.

### Is my work copyrightable?

It is generally accepted that copyright protection does not extend to ideas or processes. Facts alone are also not afforded copyright protection. Only an artist's particular expression of an idea is protected. For example, while the facts in a newspaper are not protected by copyright, the creative elements in assembling the facts are protected.

Books, movies, poems, songs, pictures, paintings, and even buildings are examples of materials protected by copyright. See 17 U.S.C. § 102. However, copyright protection for an original work does not extend to some things, like concepts.

For instance, if an author writes a story about three bears and a blonde girl, he cannot then sue someone for copyright infringement if that person writes his own story about three bears and a blonde girl, unless the second story actually copies from the first. That is, the first author can only sue if the second copies his *expression* — i.e., words or images.

### What does “fixed in a tangible medium of expression” mean?

A work is fixed when it is in a tangible form which would allow the work to be perceived, reproduced, or otherwise communicated for a period of time. Examples of fixed works include paintings on canvas and stories on a note pad or computer. Examples of works that are *not* fixed include actual performances of a play or choreographed dance (**Note:** while the performance of a play or dance is not copyrightable, the *documentation* — e.g., a video of a performance or dance notations — of them is) (See 17 U.S.C. § 101).

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By Melissa Black and Max Kimbrough

For Philadelphia Volunteer Lawyers for the Arts

### Who is eligible to obtain a copyright?

Virtually anyone who creates a work which is fixed in a tangible medium is eligible to obtain a copyright. Problems arise, however, when someone creates a work as part of his or her regular employment. Such works are called *works for hire*. Under the law, the employer is considered to be the author (i.e., copyright holder) of a work for hire, unless the employer and employee made a prior agreement to the contrary. 17 U.S.C. § 201(b). The work for hire doctrine is complex and fact-

dependent. Generally, something is not a work for hire unless the employment is regular or there is a written contract. Most “freelance” arrangements *do not* give rise to works for hire.

### What is the difference between protection through copyright, patent, trademark, or servicemark?

Generally, each involves the protection of property rights to information.

- **Copyright:** affords protection for *expressions* of authorship in literary, artistic, musical, and other works.
- **Patent:** affords protection for inventions and certain designs. There are three types of patents:

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- **Utility patent:** covers *functionality*, such as: new processes, machine, manufacture, composition of matter, etc.
- **Design patent:** covers the *ornamental nature* of a useful object apart from its functionality.
- **Plant patent:** covers *organic material* such as plants, seeds, and spores.
- **Trademark:** identifies the source of goods via a name, brand, or symbol; businesses use such marks to distinguish their goods from another business'. Examples of trademarks include: the Quaker from Quaker Oats products, Oldsmobile, Sentra, Nutrasweet, and Google.
- **Servicemark:** protects a name which *identifies a service provided*. Examples include Citibank, ARA, and the Philadelphia Phillies.

### PROTECTION OF COPYRIGHT

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#### *When do I become protected by copyright?*

Copyright protection begins as soon as the work is fixed in a tangible medium of expression. It is no longer necessary to register the work with the Copyright Office; however, there are benefits to registering a work (to be discussed later).

#### *What am I being protected from?*

Copyright law grants a copyright owner the *exclusive rights* in a particular work. Those rights include reproduction, distribution, performance, etc. See 17 U.S.C. § 106. If another party violates any of these rights without the copyright owner's consent—e.g., if someone copies lyrics and music from another person's song—then that person may have infringed on the first person's copyright. The owner of the copyright may then seek to enforce his rights against the infringer through settlement, injunction (i.e., a court order stopping reproduction and sale of the infringing work), and/or monetary compensation (i.e., "damages").

#### *What is "notice," and is it necessary?*

In general, notice consists of affixing the name of the copyright owner, the year of first publication of the work, the symbol ©, and the phrase "All Rights Reserved." *E.g.:*

Copyright © 2008 Philadelphia Volunteer Lawyers for the Arts.  
All Rights Reserved.

**Note:** (c) is not the same as ©. Be sure to avoid (c) and use the correct copyright symbol, ©, whenever possible.

Works created after March 1, 1989 are not required to provide notice to publicly distributed copies. *However, it is strongly advised that the author/artist continue the practice of affixing*

*notice to the work.* Notice informs others that the copyright owner claims exclusive rights in the work, and provides a judicial presumption of validity in the original work's copyright.

#### *How long does my copyright last?*

For works created after January 1, 1978 (when the 1976 Copyright Act took effect), the term is the life of the author plus 70 years. 17 U.S.C. § 302(a). If the author shares a joint copyright with another author, the term is the life of the last surviving author plus 70 years. 17 U.S.C. § 302(b). Works for hire last 95 years from the date of first publication, or 120 years from the date of creation—whichever expires first. 17 U.S.C. § 302(c). Everything published prior to 1923 is in the public domain and free to use. Everything created prior to 1883 but *never published* is in the public domain and free to use. Anything created after 1883 or published after 1923 may or may not be protected today.

If you are uncertain whether a work is still under copyright protection—particularly for works created *prior* to January 1, 1978—it is advised that you consult with someone experienced in copyright law or call the Copyright Office in Washington, D.C. at (202) 707-3000.

### REGISTRATION AND DEPOSIT OF THE WORK

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#### *Must I register my work with the Copyright Office?*

Generally, someone does *not* need to register his work in order to get copyright protection. However, registration is still strongly recommended, because it puts others on notice that the author claims a right in his work, and preserves the author's right to recover statutory damages and attorneys fees in an infringement suit. 17 U.S.C. § 412. In addition, registration is required prior to bringing an infringement suit.

#### *When should I register?*

An author may register at any time during the term of the copyright. However, registration is best completed shortly after the work is fixed in a tangible medium. This affords maximum protection for the owner of the work, and preserves his rights in the recovery of certain damages (noted above), and precludes the opposing party from claiming that he lacked notice that someone else owned rights in a particular work. 17 U.S.C. §§ 408, 412.

#### *What are the requirements of registration?*

Generally, the author must deposit at least one copy of the work with the Copyright Office, along with a \$45 application fee (\$35 if registering online). **Note:** fees and registration requirements change; be sure to check the current requirements before registering, or consult with a person knowledgeable in copyright law. You may check the Copyright

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Office Web site at [www.copyright.gov](http://www.copyright.gov), or call (202) 707-3000 for more information. Further requirements are listed within the Copyright Act, 17 U.S.C. § 408.

### HOW TO REGISTER A COPYRIGHT

#### How do I register?

First, get the appropriate registration forms from the Copyright Office. There are five types of forms that cover the majority of individuals:

- **Form TX:** used for “published or unpublished non-dramatic literary works, excluding periodicals or serial issues.” Examples include textbooks, poetry, and computer programs.
- **Form VA:** used for “pictorial, graphic, applied art, photographs, prints and art reproduction, maps, globes, charts, technical drawings, diagrams, and models.”
- **Form PA:** used for “published or unpublished work of performing arts,” including works performed for an audience either directly or indirectly. For example, musical works with accompanying lyrics, dramatic works with accompanying music, pantomimes and choreographic works, and motion pictures or other audiovisual works.
- **Form SR:** used for “published or unpublished sound recordings.” These types of sound recordings include works that result from the fixation of a series of musical, spoken, or other sounds—i.e., compact discs or cassette tapes, etc.
- **Form SE:** used if the work is an “individual issue of a serial.” A serial is a work that is intended to be issued in successive parts indefinitely.

**Note:** further information concerning the appropriate forms to be used may be sought by calling the Copyright Office in Washington, D.C. at (202) 707-3000. If you know which forms you need, there is a forms hot-line which is open 24-hours a day, 7 days a week, at (202) 707-9100. Additionally, you can

get valuable information and copyright forms from the Internet by visiting the Copyright Office’s Web site as **[www.copyright.gov](http://www.copyright.gov)**.

#### How much does it cost to register a copyright?

Each registration requires a \$45 non-refundable fee (\$35 for online registration). As noted above, fees are subject to change; be sure to contact the Copyright Office to confirm the cost of registering.

#### Further information

A good publication which is available through the Copyright Office is called *Copyright Basics*. The Copyright Office will send you a copy of this, or any other circular, free of charge upon request. The publication is also free to download off of the Copyright Office’s Web site at <http://www.copyright.gov/circs/circ1.pdf>. The Copyright Office has dozens of circulars which further explain copyright law. When making an inquiry to the Copyright Office, ask if there is a circular specifically pertaining to your question.

A useful publication that is available through PVLA is the *Artist’s Guide to Copyright, Patent, Trademark and Trade Secret Law*, by John W. Caldwell and Laura G. Miller. Mr. Caldwell and Ms. Miller are Philadelphia attorneys who have expertise in the areas of copyright, patent, and trade secret law. The publication is easy to read and very informative. The *Artist’s Guide* and other useful publications may be found on PVLA’s Web site, at <http://www.artsandbusinessphila.org/pvla/pvlabooks.asp>.

PVLA has other publications which examine copyright law. For more information concerning these publications, or for help with copyright issues, please call us at (215) 790-3836.

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#### Other titles in this series:

- Fair Use Guide
- An Artist’s Guide to Wills and Estates
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- Guide to Licensing Stock Photography
- Documentaries — A Sample Release Form
- Intellectual Property — An Artist’s Primer
- Transformative Works and Copyright for Visual Artists
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- Music Publishing — A Sample Contract between Composer and Publisher
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