

WHAT YOU NEED TO KNOW ABOUT COPYRIGHTS

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Why do lawyers need to know about copyright law? If you or your clients have ever created, adapted, reproduced, distributed, or used others' expressive materials, including writings, photographs, graphics, computer programs, digital works, music, videos, compilations, or other material, you need a basic understanding of copyright law.

In the United States, copyright law is a statutory scheme of intellectual property protection dating back over 200 years to the Constitution. Although Franklin, Madison and Hamilton never used computers, the Internet, social media, or artificial intelligence, the system they established continues to provide the foundation for protecting creative expression in these technologies.

Congress enacted the first Copyright Act in 1790, and the current Act was enacted in 1976, with numerous amendments since then. 17 U.S.C. §101 et seq. Copyright protects "original works of authorship fixed in any tangible medium of expression." These include a wide range of expressive works such as literary works like books, articles, short stories, poems, and computer programs; works of the performing arts such as musical and dramatic works, pantomimes and choreography, and motion pictures and audiovisual works; pictorial, graphic, sculptural, and architectural works; sound recordings; and original compilations of facts and information.

The copyright owner has the exclusive right to reproduce and distribute the work, prepare derivative works, publicly display and perform it, and authorize others to do so during the term of the copyright. Copyright does not protect underlying facts, ideas, procedures, processes, concepts, principles or discoveries, but only the expression of underlying facts, information and ideas in an original way.

The Fair Use Doctrine

Although the copyright owner is granted a bundle of exclusive rights, under certain conditions another person may be able to make "fair use" of all or part of a copyrighted work. Under the fair use doctrine, if the use is for a purpose deemed beneficial to society such as criticism, comment, news reporting, teaching,

scholarship or research, the use may be allowed despite the copyright owner's exclusive rights.

In determining whether a particular use is a fair use, the statute states that certain factors should be considered, including the purpose of the use, such as whether it is for commercial or nonprofit educational purposes; the nature of the work; how much of the work is used and how substantial that portion is in relation to the entire work, both quantitatively and qualitatively; and the effect of the use upon the potential market or value of the work. 17 U.S.C. §107.

Fair use depends on the particular circumstances of each case and cannot be determined by a simple formula. Courts frequently consider whether a derivative use has a different purpose or character from the original. Merely adding new expression, meaning, or message does not automatically establish fair use, particularly where the uses serve the same or highly similar commercial purposes.

Ownership and Work for Hire

The owner of a copyright is generally its author. Where two or more people create a work together, it may be considered a joint work if they intend their contributions to be merged into inseparable or interdependent parts of a unitary whole.

Thus, Lennon and McCartney's Beatles songs are familiar examples of joint works. In contrast, the musical *Cats* is not a joint work between T.S. Eliot and Andrew Lloyd Webber merely because Eliot's preexisting poems were later combined with Webber's music. There was no original intention by Eliot to merge his contribution with Webber's so the music and lyrics remain separate copyrightable components of the play and the songs.

Another important concept is the "work made for hire" doctrine. Under the Copyright Act, a "work made for hire" can arise in one of two ways. The first is a work prepared by an employee within the scope of employment. A staff writer, photographer, or computer programmer creating material within that scope will ordinarily create a work whose copyright belongs to the employer.

The second involves certain works that have been specially ordered or commissioned. Such a work qualifies only if it falls within one of several statutory categories and the parties expressly agree in a signed writing that it will be considered a work made for hire. See 17 U.S.C. §101.

Thus, merely paying an independent writer, photographer, artist, or programmer does not in itself make a work one made for hire. The parties should address ownership issues expressly in a written agreement, and include an assignment of copyright rights in appropriate cases.

Term of Copyright

The term of a copyright depends on a number of factors, including when it was created or published. For most works created on or after January 1, 1978, copyright lasts for the author's life plus 70 years. For joint works, the term is 70 years after the death of the last surviving author. For works made for hire, and anonymous and pseudonymous works, the term is 95 years from the year of first publication or 120 years from creation, whichever expires first.

Determining the status of older works can be more complicated because earlier statutes imposed different terms and formalities. As a general rule, works published in the United States in 1930 or earlier are now in the public domain, although some works may present additional issues. As a result, each year on January 1, another year's works from the applicable 95-year period lose their copyright protection and enter the public domain.

Registration and Enforcement

Copyright in an original work commences automatically as soon as it is fixed in a tangible medium. Registration with the U.S. Copyright Office is not a prerequisite for copyright protection. Similarly, the copyright owner does not have to mark copies of the work with a copyright notice, but it is advisable to do so. The statutory copyright notice consists of the word "Copyright" the abbreviation "Copr.", or the symbol ©, and the date and the author's name, e.g. © 2026 Ima Lawyer.

Even though it is not legally required, copyright registration provides important benefits. For a U.S. work, the Copyright Act generally requires registration before the owner can institute an infringement action in federal court. Filing an application alone does not satisfy this requirement - the Copyright Office must act on it.

Timely registration also affects the owner's potential remedies. If statutory requirements have been satisfied, by registering before infringement begins or within three months after its first publication, the owner may elect statutory damages instead of proving actual damages and profits. Statutory damages typically

range from \$750 to \$30,000 for each work infringed and may reach \$150,000 per work for willful infringement. The owner may also be entitled to attorney's fees and costs if it prevails in the case. 17 U.S.C. §§504-505.

A court may issue an injunction and, in appropriate circumstances, order impoundment or destruction of infringing articles. Certain willful copyright infringements can result in criminal penalties. 17 U.S.C. §§502-503, 506. Congress has also recently created an alternative for smaller disputes, the Copyright Claims Board, which is a three-member tribunal within the Copyright Office providing a streamlined, voluntary alternative to federal court for certain disputes involving claims of up to \$30,000.

Copyright and Artificial Intelligence

Artificial intelligence has created new copyright questions, although traditional principles continue to apply. Copyright protection in the United States requires human authorship. Using AI as an assistive tool does not by itself prevent copyright protection, and human-created portions of a work containing AI-generated material may qualify.

Material generated entirely by artificial intelligence without sufficient human creative authorship is not itself protected. Depending upon the circumstances, however, a human creator's original selection, arrangement, modification, or other expressive contribution may be protected.

Conclusion

Copyright law is a field of great social and economic importance. Each of us encounters copyrights every day in publications and websites, music, photographs and artwork, films and other media, software and technology, and increasingly material created or encountered through artificial intelligence. Consequently, attorneys in all fields of practice should become familiar with the basic concepts of copyright law.

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