

Excerpts from Circular #1, Copyright Basics, October 1993

WHAT IS COPYRIGHT

Copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of "original works of authorship" including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished work. Section 1206 of the Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the copyrighted work;
- To prepare derivative works based upon the copyrighted work;
- To distribute copies...of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work.

It is illegal for anyone to violate any of the rights provided by the Act to the owner of copyright.

WHO CAN CLAIM COPYRIGHT

Copyright protection exists from the time the work is created in fixed form; that is, it is an incident of the process of authorship. The copyright in the work of authorship immediately becomes the property of the author who created it. Only the author or those deriving their rights through the author can claim copyright.

In the case of works made for hire, the employer and not the employee is presumptively considered the author. Section 101 of the copyright statute defines a "work made for hire" as:

1. a work prepared by an employee within the scope of his or her employment; or
2. a work specially ordered or commissioned for use as a contribution to a collective work. If the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. The authors of a joint work are co-owners of the copyright in the work, unless there is an agreement to the contrary.

NOTICE OF COPYRIGHT

For works first published on and after March 1, 1989, use of the copyright notice is optional, though highly recommended. Before March 1, 1989, the use of the notice was mandatory on all published works, and any work first published before that date must bear a notice or risk loss of copyright protection.

HOW TO SECURE A COPYRIGHT

No publication or registration or other action in the Copyright Office is required to secure copyright. There are, however, certain definite advantages to registration (as soon after creation as possible).

HOW LONG COPYRIGHT PROTECTION ENDURES

A work that is created on or after January 1, 1978, is automatically protected from the moment of its creation, and is ordinarily given a term enduring for the author's life, plus an additional 50 years after the author's death. For anonymous and pseudonymous works (unless the author's identity is revealed in Copyright Office records), the duration of copyright will be 75 years from publication or 100 years from creation, whichever is shorter.

TRANSFER OF COPYRIGHT

Any or all of the exclusive rights, or any subdivision of those rights, of the copyright owner may be transferred, but the transfer of exclusive rights is not valid unless that transfer is in writing and signed by the owner of the rights conveyed (or such owner's duly authorized agent). Transfer of a right on a nonexclusive basis does not require a written agreement (Ed. note: But to prevent confusion on what rights are specifically transferred, it is good practice to put the conditions of the transfer in writing.)

Copyright is a personal property right, and it is subject to the various state laws and regulations that govern the ownership, inheritance, or transfer of personal property as well as terms of contracts or conduct of business. For information about relevant state laws, consult an attorney.

LEGAL ADVICE

The Copyright Office is not permitted to give legal advice. If information or guidance is needed on matters such as disputes over ownership of a copyright, suits against possible infringers, the procedure for getting a work published, or the method of obtaining royalty payments, it may be necessary to consult an attorney.

For further information on Transfer of Copyright, Work for Hire, International Copyright Protection, Registration Procedures, and Fees, consult Circular #1, or contact the Copyright Office, LM-455 Library of Congress Washington, D.C. 20059-6000. To speak to a Copyright Information Specialist, call (202) 707-3000 during the office hours of 8:30 a.m. to 5:00 p.m. (Eastern Time) except Federal Holidays.

The complete circular is available through the Copyright Office, Library of Congress Washington, D.C. 20559-6000