

FREQUENTLY ASKED QUESTIONS

What is copyright?

Copyright is a form of protection grounded in the U.S. Constitution and granted by law for original works of authorship fixed in a tangible medium of expression. Copyright covers both published and unpublished works.

What does copyright protect?

Copyright, a form of intellectual property law protects original works of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture. Copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed.

How is a copyright different from a patent or a trademark?

Copyright protects original works of authorship, while a patent protects inventions or discoveries. Ideas and discoveries are not protected by the copyright law, although the way in which they are expressed may be. A trademark protects words, phrases, symbols, or designs identifying the source of the goods or services of one party and distinguishing them from those of others.

When is my work protected?

Your work is under copyright protection the moment it is created and fixed in a tangible form that it is perceptible either directly or with the aid of a machine or device.

Do I have to register with your office to be protected?

No. In general, registration is voluntary. Copyright exists from the moment the work is created. You will have to register, however, if you wish to bring a lawsuit for infringement of a U.S. work.

Why should I register my work if copyright protection is automatic?

Registration is recommended for a number of reasons. Many choose to register their works because they wish to have the facts of their copyright on the public record and have a certificate of registration. Registered works may be eligible for statutory damages and attorney's fees in successful litigation. Finally, if registration occurs within 5 years of publication, it is considered *prima facie* evidence in a court of law.

I've heard about a "poor man's copyright." What is it?

The practice of sending a copy of your own work to yourself is sometimes called a "poor man's copyright." There is no provision in the copyright law regarding any such type of protection, and it is not a substitute for registration.

Is my copyright good in other countries?

The United States has copyright relations with most countries throughout the world, and as a result of these agreements, we honor each other's citizens' copyrights. However, the United States does not have such copyright relationships with every country.

What does copyright protect?

Copyright, a form of intellectual property law, protects original works of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture. Copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed.

Can I copyright my website?

The original authorship appearing on a website may be protected by copyright. This includes writings, artwork, photographs, and other forms of authorship protected by copyright.

Can I copyright my domain name?

Copyright law does not protect domain names. The Internet Corporation for Assigned Names and Numbers (ICANN), a nonprofit organization that has assumed the responsibility for domain name system management, administers the assignment of domain names through accredited registers.

How do I protect my recipe?

A mere listing of ingredients is not protected under copyright law. However, where a recipe or formula is accompanied by substantial literary expression in the form of an explanation or directions, or when there is a collection of recipes as in a cookbook, there may be a basis for copyright protection. Note that if you have secret ingredients to a recipe that you do not wish to be revealed, you should not submit your recipe for registration, because applications and deposit copies are public records.

Can I copyright the name of my band?

No. Names are not protected by copyright law. Some names may be protected under trademark law.

How do I copyright a name, title, slogan or logo?

Copyright does not protect names, titles, slogans, or short phrases. In some cases, these things may be protected as trademarks. However, copyright protection may be available for logo artwork that contains sufficient authorship. In some circumstances, an artistic logo may also be protected as a trademark.

How do I protect my idea?

Copyright does not protect ideas, concepts, systems, or methods of doing something. You may express your ideas in writing or drawings and claim copyright in your description, but be aware that copyright will not protect the idea itself as revealed in your written or artistic work.

Does my work have to be published to be protected?

Publication is not necessary for copyright protection.

Can I register a diary I found in my grandmother's attic?

You can register copyright in the diary only if you own the rights to the work, for example, by will or by inheritance. Copyright is the right of the author of the work or the author's heirs or assignees, not of the one who only owns or possesses the physical work itself.

How do I protect my sighting of Elvis?

Copyright law does not protect sightings. However, copyright law will protect your photo (or other depiction) of your sighting of Elvis. No one can lawfully use your photo of your sighting, although someone else may file his own photo of his sighting. Copyright law protects the original photograph, not the subject of the photograph.

Does copyright protect architecture?

Yes. Architectural works became subject to copyright protection on Dec. 1, 1990. The copyright law defines "architectural work" as "the design of a building embodied in any tangible medium of expression, including a building, architectural plans, or drawings." Copyright protection extends to any architectural work created on or after Dec. 1, 1990. Also, any architectural works that were unconstructed and embodied in unpublished plans or drawings on that date and were constructed by Dec. 31, 2002, are eligible for protection. Architectural designs embodied in buildings constructed prior to Dec. 1, 1990, are not eligible for copyright protection.

Can I get a star named after me and claim copyright to it?

No. There is a lot misunderstanding about this. Names are not protected by copyright. Publishers of publications such as a star registry may register a claim to copyright in the text of the volume [or book] containing the names the registry has assigned to stars, and perhaps the compilation of data; but such a registration would not extend protection to any of the individual star names appearing therein.

Can foreigners register their works in the United States?

Any work that is protected by U.S. copyright law can be registered. This includes many works of foreign origin. All works that are unpublished, regardless of the nationality of the author, are protected in the United States. Works that are first published in the United States or in a country with which we have a copyright treaty or that are created by a citizen or domiciliary of a country with which we have a copyright treaty are also protected and may therefore be registered with the U.S. Copyright Office.

Can a minor claim copyright?

Minors may claim copyright, and the Copyright Office issues registrations to minors, but state laws may regulate the business dealings involving copyrights owned by minors. For information on relevant state laws, consult an attorney.

Can I register a diary I found in my grandmother's attic?

You can register copyright in the diary only if you own the rights to the work, for example, by will or by inheritance. Copyright is the right of the author of the work or the

author's heirs or assignees, not of the one who only owns or possesses the physical work itself.

What is the registration fee?

The current filing fee is \$30 per application. Generally, each work requires a separate application.

Do I have to use my real name on the form? Can I use a stage name or a pen name?

There is no legal requirement that the author be identified by his or her real name on the application form.

Can I submit my manuscript on a computer disk?

No. Floppy disks and other removal media such as Zip disks, except for CD-ROMs are not acceptable. Therefore, the Copyright Office still generally requires a printed copy or audio recording of the work for deposit.

Can I submit a CD-ROM of my work?

Yes. The deposit requirement consists of the best edition of the CD-ROM package of any work, including the accompanying operating software, instruction manual, and a printed version, if included in the package.

Does my work have to be published to be protected?

Publication is not necessary for copyright protection.

How much do I have to change in my own work to make a new claim of copyright?

You may make a new claim in your work if the changes are substantial and creative, something more than just editorial changes or minor changes. This would qualify as a new derivative work. For instance, simply making spelling corrections throughout a work does not warrant a new registration, but adding an additional chapter would.

How long does a copyright last?

The term of copyright for a particular work depends on several factors, including whether it has been published, and if so, the date of first publication. As a general rule, for works created after Jan. 1, 1978, copyright protection lasts for the life of the author plus an additional 70 years. For an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation, whichever expires first. For works first published prior to 1978, the term will vary depending on several factors.

Do I have to renew my copyright?

No. Works created on or after Jan. 1, 1978, are not subject to renewal registration. As to works published or registered prior to Jan. 1, 1978, renewal registration is optional after 28 years but does provide certain legal advantages.

How do I get permission to use somebody else's work?

You can ask for it. If you know who the copyright owner is, you may contact the owner directly.

How can I obtain copies of someone else's work and/or registration certificate?

The Copyright Office will not honor a request for a copy of someone else's protected work without written authorization from the copyright owner or from his or her designated agent, unless the work is involved in litigation. In the latter case, a litigation statement is required. A certificate of registration for any registered work can be obtained for a fee of \$30.

How much of someone else's work can I use without getting permission?

Under the *fair use* doctrine of the U.S. copyright statute, it is permissible to use limited portions of a work including quotes, for purposes such as commentary, criticism, news reporting, and scholarly reports. There are no legal rules permitting the use of a specific number of words, a certain number of musical notes, or percentage of a work. Whether a particular use qualifies as fair use depends on all the circumstances.

How much do I have to change in order to claim copyright in someone else's work?

Only the owner of copyright in a work has the right to prepare, or to authorize someone else to create, a new version of that work. Accordingly, you cannot claim copyright to another's work, no matter how much you change it, unless you have the owner's consent.

Somebody infringed my copyright. What can I do?

A party may seek to protect his or her copyrights against unauthorized use by filing a civil lawsuit in federal district court. If you believe that your copyright has been infringed, consult an attorney. In cases of willful infringement for profit, the U.S. Attorney may initiate a criminal investigation.

Could I be sued for using somebody else's work? How about quotes or samples?

If you use a copyrighted work without authorization, the owner may be entitled to bring an infringement action against you. There are circumstances under the fair use doctrine where a quote or a sample may be used without permission. However, in cases of doubt, the Copyright Office recommends that permission be obtained.

Do you have a list of songs or movies in the public domain?

No, we neither compile nor maintain such a list. A search of our records, however, may reveal whether a particular work has fallen into the public domain.

Is it legal to download works from peer-to-peer networks and if not, what is the penalty for doing so?

Uploading or downloading works protected by copyright without the authority of the copyright owner is an infringement of the copyright owner's exclusive rights of reproduction and/or distribution. Anyone found to have infringed a copyrighted work may be liable for statutory damages up to \$30,000 for each work infringed and, if willful infringement is proven by the copyright owner, that amount may be increased up to \$150,

000 for each work infringed. In addition, an infringer of a work may also be liable for the attorney's fees incurred by the copyright owner to enforce his or her rights.

Whether or not a particular work is being made available under the authority of the copyright owner is a question of fact. But since any original work of authorship fixed in a tangible medium (including a computer file) is protected by federal copyright law upon creation, in the absence of clear information to the contrary, most works may be assumed to be protected by federal copyright law.

Since the files distributed over peer-to-peer networks are primarily copyrighted works, there is a risk of liability for downloading material from these networks. To avoid these risks, there are currently many "authorized" services on the Internet that allow consumers to purchase copyrighted works online, whether music, ebooks, or motion pictures. By purchasing works through authorized services, consumers can avoid the risks of infringement liability and can limit their exposure to other potential risks, e.g., viruses, unexpected material, or spyware.

Can a school show a movie without obtaining permission from the copyright owner?

If the movie is for entertainment purposes, you need to get a clearance or license for its performance.

It is not necessary to obtain permission if you show the movie in the course of "face-to-face teaching activities" in a nonprofit educational institution, in a classroom or similar place devoted to instruction, if the copy of the movie being performed is a lawful copy. This exemption encompasses instructional activities relating to a wide variety of subjects, but it does not include performances for recreation or entertainment purposes, even if there is cultural value or intellectual appeal.

Questions regarding this provision of the copyright law should be made to the legal counsel of the school or school system.

My local copying store will not make reproductions of old family photographs. What can I do?

Photocopying shops, photography stores and other photo developing stores are often reluctant to make reproductions of old photographs for fear of violating the copyright law and being sued. These fears are not unreasonable, because copy shops have been sued for reproducing copyrighted works and have been required to pay substantial damages for infringing copyrighted works. The policy established by a shop is a business decision and risk assessment that the business is entitled to make, because the business may face liability if they reproduce a work even if they did not know the work was copyrighted.

In the case of photographs, it is sometimes difficult to determine who owns the copyright and there may be little or no information about the owner on individual copies. Ownership of a "copy" of a photograph – the tangible embodiment of the "work" – is distinct from the "work" itself – the intangible intellectual property. The owner of the "work" is generally the photographer or, in certain situations, the employer of the

photographer. Even if a person hires a photographer to take pictures of a wedding, for example, the photographer will own the copyright in the photographs unless the copyright in the photographs is transferred, in writing and signed by the copyright owner, to another person. The subject of the photograph generally has nothing to do with the ownership of the copyright in the photograph. If the photographer is no longer living, the rights in the photograph are determined by the photographer's will or passed as personal property by the applicable laws of intestate succession.

There may be situations in which the reproduction of a photograph may be a "fair use" under the copyright law. However, even if a person determines a use to be a "fair use" under the factors of section 107 of the Copyright Act, a copy shop or other third party need not accept the person's assertion that the use is noninfringing. Ultimately, only a federal court can determine whether a particular use is, in fact, a fair use under the law.

Are copyrights transferable?

Yes. Like any other property, all or part of the rights in a work may be transferred by the owner to another.

Can I backup my computer software?

Yes, under certain conditions as provided by section 117 of the Copyright Act. Although the precise term used under section 117 is "archival" copy, not "backup" copy, these terms today are used interchangeably. This privilege extends only to computer programs and not to other types of works.

Under section 117, you or someone you authorize may make a copy of an original computer program if:

- the new copy is being made for archival (i.e., backup) purposes only;
- you are the legal owner of the copy; and
- any copy made for archival purposes is either destroyed, or transferred with the original copy, once the original copy is sold, given away, or otherwise transferred.

You are not permitted under section 117 to make a backup copy of other material on a computer's hard drive, such as other copyrighted works that have been downloaded (e.g., music, films).

It is also important to check the terms of sale or license agreement of the original copy of software in case any special conditions have been put in place by the copyright owner that might affect your ability or right under section 117 to make a backup copy.

Can I buy or sell backup copies of computer software (on an online auction or from a website)? Can I buy a backup copy of software I already own?

No. You may transfer a backup copy only with the sale of the original copy of the software, as noted above (or have a backup copy transferred to him, if the consumer is the purchaser). But the Copyright Act does not permit you to simply "buy" or "sell" backup copies from or to a third party.

We have been made aware of websites that are offering to sell "backup" copies of software via download over the Internet or in a custom-burned CD-R format, under the guise that section 117 permits this. Section 117 does NOT permit this. Again, section 117 does not allow you to "buy" or "sell" backup copies from or to a third party. It does not allow anyone to distribute "backup" copies to the public. Such activity is also likely to be a violation of the terms of your license to the software. In many cases these sites appear to be a front for distribution of illegal copies, which is copyright infringement. You should be wary of sites that offer to "sell" you a backup copy.

Can I copyright my website?

The original authorship appearing on a website may be protected by copyright. This includes writings, artwork, photographs, and other forms of authorship protected by copyright.

Can I copyright my domain name?

Copyright law does not protect domain names. The Internet Corporation for Assigned Names and Numbers (ICANN), a nonprofit organization that has assumed the responsibility for domain name system management, administers the assignation of domain names through accredited registers.

Is it legal to download works from peer-to-peer networks and if not, what is the penalty for doing so?

Uploading or downloading works protected by copyright without the authority of the copyright owner is an infringement of the copyright owner's exclusive rights of reproduction and/or distribution. Anyone found to have infringed a copyrighted work may be liable for statutory damages up to \$30,000 for each work infringed and, if willful infringement is proven by the copyright owner, that amount may be increased up to \$150,000 for each work infringed. In addition, an infringer of a work may also be liable for the attorney's fees incurred by the copyright owner to enforce his or her rights.

Whether or not a particular work is being made available under the authority of the copyright owner is a question of fact. But since any original work of authorship fixed in a tangible medium (including a computer file) is protected by federal copyright law upon creation, in the absence of clear information to the contrary, most works may be assumed to be protected by federal copyright law.

Since the files distributed over peer-to-peer networks are primarily copyrighted works, there is a risk of liability for downloading material from these networks. To avoid these risks, there are currently many "authorized" services on the Internet that allow consumers to purchase copyrighted works online, whether music, ebooks, or motion pictures. By purchasing works through authorized services, consumers can avoid the risks of infringement liability and can limit their exposure to other potential risks, e.g., viruses, unexpected material, or spyware.

What is mandatory deposit?

Mandatory deposit requires the owner of copyright or of the exclusive right of distribution to deposit in the U.S. Copyright Office for the use of the Library of Congress two complete copies of the best edition within 3 months after a work is published. Copies of all works under copyright protection that have been published or distributed in the United States must be deposited with the Copyright Office within 3 months of the date of first publication. Electing not to register your copyright in the work with the Copyright Office does not exempt you from the mandatory deposit provision of the law.

We are a foreign publisher. Do we need to submit our publication to comply with the U.S. deposit requirement?

Yes. If you distribute your work in the United States, you are subject to the deposit requirements of the United States. These requirements apply to a work that is first published in a foreign country as soon as that work is distributed in the United States through the distribution of copies that are either imported or are part of an American edition. The deposit requirement is one copy.

What is the difference between mandatory deposit and copyright registration?

Mandatory deposit requires the owner of copyright or the exclusive right of distribution to deposit in the Copyright Office for the use of the Library of Congress two complete copies of the best edition within 3 months after a work is published. Section 408 of the copyright law, for a fee, provides the option to formally register the work with the U.S. Copyright Office. This registration process provides a legal record of copyright ownership as well as additional legal benefits in cases of infringement. Optional registration fulfills mandatory deposit requirements.

Is there an exception to mandatory deposits?

Yes. Under certain circumstances, special relief from deposit requirements may be granted. The grant of special relief is discretionary with the U.S. Copyright Office and will depend on a careful balance of the acquisition policies of the Library of Congress, the examining requirements of the Copyright Office (if registration is sought), and the hardship to the copyright owner.

Requests must set forth specific reasons why special relief should be granted and must be signed by or on behalf of the owner of copyright or the owner of the exclusive right of distribution in the work.

If my publication does not have a copyright notice, do I still have to deposit?

Yes. On March 1, 1989, the qualification "with notice of copyright" was eliminated from the mandatory deposit provision. As a result of this change, all works under copyright protection that are published in the United States on or after March 1, 1989, are subject to mandatory deposit whether published with or without a notice.

What is the difference between the mandatory deposit obligation and the Cataloging in Publication (CIP) obligation?

Mandatory deposit is a legal obligation and applies to all U.S. and foreign publishers

distributing their works in the United States. A CIP obligation is limited to those publishers who have entered a contractual agreement with the Library of Congress. In exchange for the Library providing preliminary cataloging information to the publisher for works submitted to the CIP program, the publisher agrees to provide a copy of the publication to the Library of Congress.

Will my Cataloging In Publication (CIP) copy fulfill my mandatory deposit obligation?

No. CIP is a separate program within the Library of Congress that requires participating publishers to submit one copy of published works. The CIP is in addition to the two copies required for mandatory deposit.

If I send deposit copies of a sample issue of my serial publication to the Register of Copyrights, have I fulfilled the deposit requirement with respect to my serial publication?

No. For copyright purposes each serial issue is considered a separate work. You must deposit two copies of each issue within three months after the date of publication. If you do not intend to register, you may find it convenient to add the address of the Register of Copyrights to your mailing list so that two copies are automatically sent to the Copyright Office each time an issue is published.

I have already deposited identifying material to register my computer software as described in *Circular 61-Copyright Registration for Computer Programs*. Why am I now being requested to send the actual software?

The deposit requirement for registration is one copy of identifying portions of the computer program. However, to satisfy the mandatory deposit under section 407, a "complete copy" of the published work must be deposited. A complete copy is defined in the regulations as a copy that includes all components that make up the unit of publication, even if any of those units are in the public domain. So, if the published user guide is normally part of a package that contains other elements, then the mandatory deposit requirement requires the deposit of those other elements, too. For example, if the user guide is published as part of a package that contains a CD-ROM, an installation guide, and installation software, then each of these other elements must be deposited in addition to the user guide to fulfill the mandatory deposit requirement.

If the Library of Congress does not want to retain my newspaper in the microfilm collection, do I still need to submit a copy of the 35mm silver positive to apply for the copyright registration?

If the Library of Congress decides not to retain your microfilm in the newspaper microfilm collection, the Copyright Acquisitions Division (CAD) of the Copyright Office may exempt you from sending the microfilm. CAD will notify you if your newspaper is exempt. However, the Library reserves the right to reverse this decision. If LC decides to retain your newspaper in the collection in the future, CAD will issue to your organization a request for the microfilm deposit.

If the Library of Congress does not want to add our newspaper to its collection, can we still register our copyright with the Copyright Office?

Yes. In this case, an optional deposit may accompany the application. This deposit should consist of (a) complete print copies of the first and last issues of the month; or (b) print copies of the first section of the first and last issues of the month; or (c) print copies of the first page of the first and last issues of the month.

What are the requirements for applying for the newspaper group registration?

A group of newspaper issues may be registered on Form G/DN only if all the following conditions are met. (1) The newspaper is a daily newspaper. (2) The submission includes all issue dates within the calendar month within the same year. (3) The submission includes a complete month's issues in microfilm form, unless specifically exempted. (4) Each issue essentially must be an all-new collective work. (5) The work must be a work made for hire. (6) The author and copyright claimant must be the same person or organization. (7) The application Form G/DN must be filed within 3 months after the last publication date included in the group.

Since copyright protection exists when the work is created, is it necessary to apply for copyright registration for our newspaper? What are the benefits of copyright registration?

Even though copyright protection is secured automatically upon creation, there are certain definite advantages to copyright registration. Registration establishes a public record of the copyright claim. Before an infringement suit may be filed in court, registration is necessary for works of U.S. origin. If made before or within 5 years of publication, registration establishes *prima facie* evidence in court of the validity of the copyright and of the facts stated in the certificate. 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. Also, registration allows the owner of the copyright to record the registration with the U.S. Customs Service for protection against importation of infringing copies.