

**UNITED STATES  
PATENT AND TRADEMARK OFFICE**



# **USPTO Inventor Info Chat Series: Copyright Basics**

Office of Innovation Development

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Date 8/17/17

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# Office of Innovation Development

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# Overview

- What is a Copyright?
- Categories of Protected Works
- Registration Process
- Copyright Infringement

Send your questions to: [inventorinfochat@uspto.gov](mailto:inventorinfochat@uspto.gov)



# U.S. Constitution (1787)

**“The Congress shall have Power...To promote the progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Rights to their Respective Writings and Discoveries.**

***-- Article 1, Section 8, Clause 8***



# What is a Copyright?

- Copyright is a form of legal protection for authors of “original works of authorship,” including literary, dramatic, sculptural, and musical works, as well as motion pictures and sound recordings.
- The Copyright Act is found in Title 17 of the U.S. Code. The last major revision to the Act took place in 1976, but it has been amended several times since then.



# What Works are Protected?

- Work must be **fixed** in a tangible form of expression.
- The fixation need not be directly perceptible so long as the works may be perceived or otherwise communicated with the aid of a machine or device. Example: works in Random Access Memory (“RAM”) on a computer.



# What Works are Protected?

- Must be an **original** work of authorship, meaning that the work must be
  - independently created by the author (as opposed to copied from other works) and
  - contain a minimum quantum of creativity.
- The required level of creativity in the U.S. is low. Other countries' laws may differ in this respect.



# Categories of Protected Works

- Literary works
- Musical works
- Dramatic works
- Choreographic works
- Pictorial, graphic and sculptural works, including works of applied art (lamps, telephones, etc.)
- Motion pictures
- Sound recordings
- Architectural works



# Works from Pre-existing Works

- Compilations: result from process of selecting, organizing and arranging previously existing material. Example: anthology of poems.
- Derivative Works: translations, abridgements, annotated works, etc.
- For both, copyright only extends to material contributed by the author of such works, but not to the pre-existing material.



# What Works are Not Protected?

- Works that have not been fixed in a tangible medium of expression.
- Titles, names; familiar symbols or designs; mere variations of lettering; mere listings of ingredients or content.
- Ideas, procedures, concepts, principles
- Works consisting entirely of public domain material (e.g., due to expiration of term of protection); works by employees of the U.S. government (although the government can acquire copyright ownership by assignment); purely functional works.



# Idea-Expression Dichotomy

In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.



# Copyright: A Bundle of Rights

- **Reproduction**
- **Adaptation**
- **Distribution**
- **Public Performance (narrow right for sound recordings performed by digital audio transmission)**
- **Public Display**
- **Moral rights (works of visual art)**



# Securing Protection

- Copyright protection is secured **automatically** upon creation (fixation), as required by Article 5(2) of the Berne Convention.
- No publication or registration is required.

# Registration Process

- A copyright owner must:
  - File an application;
  - Pay a nominal filing fee; and
  - Deposit copies of the work at the Copyright Office. Some of the works may be added to the collections of the Library of Congress.



# Registration

- Registration is administered by the U.S. Copyright Office at the Library of Congress
- Forms available at [www.copyright.gov](http://www.copyright.gov)
- Registration does not involve complex examination of applications as for patents and trademarks.

# Why Register?

- Prima facie evidence of the validity of the copyright and of the facts in the certificate.
- Statutory damages and attorney's fees.
- Registration allows the owner of the copyright to record the registration with the U.S. Customs Service for protection against the importation of infringing copies.
- Pre-requisite for bringing suit for infringement for works whose country of origin is the United States.

# Notice

- **No notice is required (Berne Convention requires formality-free protection.)**
- Notice may benefit the owner against a claim of “innocent infringement.”
- Forms of notice: ©, the word “Copyright,” or the abbreviation “Copr.”, year of publication, and name of the copyright owner.

# Copyright Term

**Life Plus 70:** In the U.S., copyright subsists from creation and lasts for the life of the author plus 70 years after the author's death.

**95 Years from Publication:** For works made for hire (company-owned copyrights), copyright lasts until 95 years from publication or 120 years from creation, whichever comes first.



# Ownership of Copyright

- Copyright initially belongs to the author.
- Joint authors are co-owners of the copyright.
- Under the work-made-for-hire doctrine, the employer is the owner of the copyright for works created by employees within the scope of their employment.



# Works Made for Hire

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

A work specially ordered or commissioned for use as:

- A contribution to a collective work;
- A part of a motion picture or other audiovisual work;
- A translation;
- A supplementary work;
- A compilation;
- An instructional text;
- A test;
- Answer material for a test;
- An atlas.

# Transfer of Copyright

- Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights, may be transferred and owned separately.
- Transfer of ownership of any material object does not of itself convey any rights in the copyrighted work embodied in the object.
- A transfer of copyright ownership must be in writing and signed by the owner of the rights conveyed.



# Copyright Infringement

**Infringement is a violation of any of the exclusive rights of copyright.**

# Liability for Infringement

- **Direct Liability**
- **Contributory Infringement**
  - Knowledge of infringement
  - (actual or constructive)
  - Material contribution
- **Vicarious Liability**
  - Right and ability to supervise
  - Financial interest
- **Inducement (encouragement)**
  - *MGM v. Grokster* (Supreme Court, 2005)



# Fair Use

**“Fair Use” is an affirmative defense to an allegation of copyright infringement. Fair use includes uses of a work for purposes such as:**

- Criticism,
- Comment,
- News reporting,
- Teaching,
- Scholarship, or
- Research.

# Four Factor Test

1. The **purpose and character of the use**, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The **nature of the copyrighted work**;
3. The **amount and substantiality of the portion used** in relation to the copyrighted work as a whole; and
4. The **effect of the use upon the potential market** for or value of the copyrighted work.

# Copyright Remedies

- Actual damages
- Statutory damages
- Injunctions, both temporary and permanent
- Impounding of infringing copies
- Destruction of infringing copies and the machinery and equipment used to produce them
- Attorney's fees and costs
- Criminal Remedies



# The Digital Age: The WIPO “Internet” Treaties

- Negotiated in 1996 under the auspices of the World Intellectual Property Organization (WIPO) in Geneva, part of the United Nations.
- The WIPO Copyright Treaty entered into force with 30 ratifications on March 6, 2002.
- The WIPO Performances and Phonograms Treaty entered into force with 30 ratifications on May 20, 2002.



# Three New Obligations Established

- **Right of making available to the public**
  - interactive or on-demand digital transmissions over the Internet
- **Technological Protection Measures (“TPMs”).**
- **Rights Management Information (“RMI”).**



# Digital Millennium Copyright Act

- DMCA (1998) implements the two WIPO Internet Treaties in the United States.
- Extends U.S. copyright law into the digital realm.
- Prohibits circumvention of technological protection measures and trafficking in anti-circumvention devices.
- Prevents tampering with rights management information.
- Limits infringement liability for Internet Service Providers (ISPs) that meet certain criteria (not expressly required by the treaties).



# DMCA:

## Limitations on ISP Liability

- Online service providers protected from secondary liability for infringement of users
- DMCA created series of safe harbors protecting ISPs from all forms of monetary relief and limiting injunctive relief:
  - Transitory digital network communications (emails)
  - System caching
  - Information residing on networks at direction of users (Web hosting)
  - Information location tools (search engines)

# DMCA: Notice and Takedown System

- **Notice and takedown procedure:**
  - Copyright owner notifies designated agent of ISP of infringing material
  - ISP removes or blocks material
  - User may send counter-notification to ISP requesting material to be put back up
  - If copyright owner fails to file suit within time certain, ISP must restore or “put back” removed material
- **U.S. experience:** Notice and takedown system has been an effective non-judicial means of halting infringing conduct on the Internet.



# Upcoming OID Events

- September 12, 2017 – Patent Quality Chat - How Can the Patents Ombudsman and Pro Se Assistance Programs Work For You?
- September 21, 2017– Inventor Info Chat – Design Patent Application Drawing Requirements

For more information or to register for any of the above events contact us at [oidevents@uspto.gov](mailto:oidevents@uspto.gov)

<https://www.uspto.gov/patents-application-process/inventor-info-chat>





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# Thank You!

Send your questions to:

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