



Copyright Fundamentals

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Answers to Copyright Quiz

1. Federal copyright registration is required prior to bringing an infringement action in Federal Court. **True** False
2. I need to use the copyright symbol, ©, and register the work in order to own a copyright. True **False**
3. I need something to spice up a newsletter I send to clients. Since Dilbert is available via the Web for free, it is ok for me to download and use one of the comics. True **False**
4. I retained the services of a professional photographer to photograph a recently constructed project. Because I paid him for his services I can use his photographs in my advertising material as long as I give him credit for the photographs. True **False**
5. Even though the radio station has already paid a license fee to play the music, the use of the broadcast music as music-on-hold requires a license. **True** False
6. The movie, October Sky, would be great for a team building seminar. Since I own the movie, I can bring it to the office and use it for this purpose. True **False**

7. I retained the services of an artist to create a sculpture for the courtyard of an office complex I constructed; even though I paid the artist for his services, I may need to obtain his permission to destroy or modify it. **True** **False**
8. Because I have a subscription to a trade publication, I can make and distribute copies of articles contained in the publication to my employees. **True** **False**
9. A client provided me with drawings prepared by another architect for a project that was never constructed. Because the project was never constructed, I am free to incorporate the drawings in to the drawings I prepare. **True** **False**
10. I don't need a license to copy this material because I'm not going to sell the copies. **True** **False**
11. Since I obtained this material from the Federal Government, I don't need to worry about copyright. **True** **False**
12. I retained the services of a website designer to create and host a website for my firm. After several months I discovered another business that would host my website for less money. Because it is my website, I am free to copy the website and provide it to the new web host. **True** **False**



Basis of U.S. Copyright Law

U.S. Constitution Article I, Section 8, Paragraph 8

To promote the Progress of Science and useful Arts,
by securing for limited Times to Authors and Inventors
the exclusive Right to their respective Writings and
Discoveries.

Title 17, United States Code

What does a copyright protect?

- Copyright protection pertains to original works of authorship fixed in any tangible medium of expression.
- Works of authorship include:
 - Literary works
 - Musical works, including any accompanying words
 - Dramatic works, including any accompanying music
 - Pantomimes and choreographic works
 - Pictorial, graphic and sculptural works
 - Motion pictures and other audiovisual works
 - Sound recordings



What kind of protection does a copyright give its owner?

- A copyright is really a bundle of five individual rights:
 - The right to **reproduce** the copyrighted work in copies or phonorecords
 - The right to prepare **derivative works** based upon the copyrighted work
 - The right to **distribute copies** or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease or lending
 - In the case of literary, musical, dramatic and choreographic works, pantomimes and motion pictures and other audiovisual works, the **right to perform** the copyrighted work publicly
 - In the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, the **right to display** the copyrighted work publicly
- **Without copying, there is no violation of the copyright owner's rights. The independent creation of an identical work isn't copyright infringement.**



How is a copyright obtained?

- A copyright in a work arises automatically upon fixation of the work in a tangible medium; **however**, you cannot file suit for copyright infringement until the copyright has been registered in the United States Copyright Office; **there is no common law copyright.**
- To preserve the rights to seek statutory damages and attorney fees from an infringer, registration should be made promptly.
- Copyright registration is obtained **only one way**: by completing and filing a copyright registration application and depositing a copy of the work with the copyright office.
- Upon application to register the copyright the government does review the work to determine if it contains copyrightable subject matter.

Do you have to notify the public of your copyright?

- A notice of copyright **may** be placed on all publicly distributed copies from which the copyrighted work can be visually perceived.
- The proper form of copyright notice includes:
 - The symbol © (the letter "C" in a circle) or the word "Copyright" or the abbreviation "Copr."; for phonorecords, the symbol ℗ (the letter "P" in a circle) is used
 - The year of the first publication of the work
 - The name of the owner of the copyright in the work, an abbreviation by which the name can be recognized or a generally known alternative designation of the owner

How can an owner lose his or her rights to obtain a copyright?

- For works **published prior to November, 1988**, if the work didn't have a notice, the copyright was invalid, though that is curable. 17 U.S.C. § 405.
- For works **published prior to November, 1988**, errors in, rather than omission of, the copyright notice can affect the enforceability or validity of a copyright. 17 U.S.C. § 406.



Who owns the copyright?

- The copyright is initially owned by the author or authors of the work. Usually this is the person who actually created the work; however, an employer or other person for whom the work was prepared is considered the author when the work is one made for hire.
- The ownership of a copyright and any of the exclusive rights comprised in a copyright may be assigned or licensed; transfers of copyright ownership, to be valid, must be in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent; ownership documents should be recorded in the Copyright Office within one month after execution.



How long does copyright protection last?

- A work that is created on or after January 1, 1978 is ordinarily given a term of the life of the author plus 70 years.
- Works made for hire, and for anonymous and pseudoanonymous works, copyright protection will last for 95 years from publication or 120 years from creation, whichever is shorter.
 - “Publication” is defined as the distribution of copies of a work to the public by sale or other transfer of ownership or by rental, lease or lending. Offering to distribute copies to a group of persons for purposes of further distribution or public display also constitutes publication. A public display does not of itself constitute publication.



Infringement

What is infringement?

Basically, it is a theft. You infringe by taking one of the statutory rights granted to the copyright holder.



How does one make use of a copyrighted work without infringing?

Obtain a LICENSE from the copyright owner. A license can be as simple as a letter from the copyright owner granting permission to make a copy. There are rights clearance agencies that can also arrange licenses for you, such as the Harry Fox Agency



Rights Clearance (Licensing) Agencies

- **Copyright Clearance Center, Inc.**
- 222 Rosewood Drive
- Danvers, MA 01923
- Tel: 978-750-8400
- <http://www.copyright.com/>
- info@copyright.com
-
- **Richard Curtis Associates, Inc.**
- 171 East 74th Street, Floor 2
- New York, NY 10021
- www.curtisagency.com
- Telephone: (212) 772-7363
- **Copyright Clearinghouse, Inc.**
- 405 Riverside Dr.
- Burbank, CA 91506
- Phone: 818.558.3480
- Fax: 818.558.3474
- anita@copyrightclearinghouse.com
- <http://www.copyrightclearinghouse.com/>
- **American Society of Composers, Authors and Publishers (ASCAP)** <http://www.ascap.com/contactASCAP.html>
- **Broadcast Music Incorporated (BMI)** <http://www.bmi.com/contact/index.asp>
- E-mail address for Texas, Okla. region: nashville@bmi.com
- **The Society of European Stage Authors and Composers (SESAC)**
- 55 Music Square East
- Nashville, TN 37203
- Phone: 615-320-0055
- Fax: 615-329-9627
- **Music Reports, Inc.**
- 405 Riverside Dr.
- Burbank, California 91506
- Tel: (818) 558-1400 Fax: (818) 558-3484 www.musicreports.com

Infringement Exceptions

The Copyright Act provides some exceptions to the exclusive rights of copyright owners. The best known and most commonly used is the defense of Fair Use.

Fair use – copying for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.

Fair use factors

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



Cases Addressing Fair Use Defense in Advertising

Companies which use copyrighted materials in advertising and promotional materials have traditionally been unable to establish a fair use defense because of the commercial nature of the use

- Steinberg v. Columbia Pictures Industries, Inc. In this case the court held that a movie advertisement that parodied a New Yorker magazine cover was a commercial use and not entitled to a fair use defense.
- Consumers Union of the United States, Inc. v. New Regina Corp. In this case the defendant used excerpts from the plaintiff's magazine in a television commercial for defendant's vacuum cleaner. In denying defendant's motion for summary judgment the court stated that advertising qualifies as a "traditionally disfavored use."
- Amana Refrigeration Inc. v. Consumers Union of United States, Inc. Here the court held that an advertisement containing misleading excerpts from a Consumer Reports magazine did not qualify as a fair use.

Damages

Damages – an infringer of copyright is liable for either:

- The copyright owner’s actual damages and any additional profits of the infringer, or
- Statutory damages

Statutory Damages – A sum of not less than \$750 or more than \$30,000 as the court considers just. However, if the copyright owner proves that infringement was committed willfully, the court may increase the award of statutory damages to a sum of not more than \$150,000.

Court Costs and Attorney’s Fee – The court may allow the recovery of full costs by or against any party other than the United States or an officer thereof. The court may also award a reasonable attorney’s fee to the prevailing party as part of the costs.

Criminal Infringement

§ 506. Criminal Offenses

(a) **Criminal Infringement.**--Any person who infringes a copyright willfully either--

- (1) for purposes of commercial advantage or private financial gain, or
- (2) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1000, shall be punished as provided in section 2319 of Title 18.

Forfeiture and Destruction - When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall, in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all infringing copies or phonorecords and all implements, devices, or equipment used in the manufacture of such infringing copies or phonorecords.



Prison

Upon the finding of a willful infringement, the court may imprison a first offense infringer for a period of not more than 1 year or assess a fine in the amount provided for by law. However, if the offense consists of the reproduction or distribution, during any 180 day period, of at least 10 copies or phonorecords, of 1 or more copyrighted works, with a retail value of more than \$2,500, then the court may imprison the infringer for not more than 5 years, or fined in the amount set forth in this title, or both.

Questions?

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