

When the work belongs to the author's employer under the "work made for hire" or when the author publishes and registers the work anonymously or under a pseudonym the protection lasts a minimum of 95 years after publication or 120 years after creation.

Publication:

Publication is no longer the key to obtaining federal copyright. However, publication remains important for Copyright owners.

Notice of Copyright:

The use of a copyright notice is no longer required under U.S. law, although it is often beneficial because it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication.

Example of notice for Visually Perceptible Copies:

© 2011 John Doe

Unpublished work © 2011 John Doe
(For Unpublished works)

What happens if a copyright is infringed?

In the event someone infringes the exclusive rights of a copyright owner, the owner is entitled to file a lawsuit in federal court asking the court to:

1. Issue orders (restraining orders and injunctions) to prevent further violations;
2. Award money damages if appropriate;
3. In some circumstances, award attorney fees.

Fair Use:

Some uses of a copyright work are considered fair use, that is, the use may infringe but the infringement is excused because the work is being used for a transformative purpose such as research, scholarship, criticism or journalism.

To determine when an infringement should be excused on the basis of the fair use, a court will use several factors including:

1. Purpose and character of the use;
2. The Nature of the copyrighted work;
3. Amount and substantiality of the portion used in relation to the copyrighted work as a whole and;
4. Effect of the use on the market for the copyrighted material.

Source of Law:

- U.S. copyright protection derives from the U.S. Constitution.
- Copyright Act of 1976, 17 U.S.C. sec. 101 et seq. There are no state copyright, only federal.
- Visual Artist Right Act of 1990 (VARA), 17 U.S.C. sec. 106A (federal) Protects rights of attribution and integrity, but limited to works of visual art.
- Ley de Propiedad Intelectual de Puerto Rico, 31 L.P.R.A. sec. 1401 et seq.

More information about Copyright is available at the Copyright Office www.copyright.gov.



WHAT IS A COPYRIGHT?



What is a Copyright?

A 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 unpublished works.

What Copyright Law covers?

Copyright law covers the broad range of literary and artistic expression, including books, poetry, song, dance, dramatic works, computer programs, movies, sculpture, and paintings. Ideas or facts themselves are not copyrightable, but the author’s particular expression of an idea is protectable.

Copyrightable works include the following categories:

1. Literacy works (Example: Computer programs and most “compilations”)
2. Musical works, including any accompanying words
3. Dramatic works, including any accompanying music
4. Pantomimes and choreographic works
5. Pictorial, graphic, and sculptural works (Example: maps and architectural plans)
6. Motion pictures and other audiovisuals works
7. Sound recordings
8. Architectural works

A work consisting entirely of information that is common property and containing no original authorship can’t be protected by Copyright.

Characteristic of Copyright:

1. It must be original. In other words, the author must have created rather than copied it.
2. It must be fixed in a tangible (concrete) medium of expression. For example, it

might be expressed on paper, audio or video tape, computer disk, clay or canvas.

3. It must have at least some creativity; it must be produced by an exercise of human intellect.

Scope of Protection:

Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

1. Perform and/or display the work publicly.
2. Distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending.
3. Reproduce the work in copies or phonorecords.
4. Prepare derivative works based upon the work.
5. Certain authors of works of visual arts have the rights of attribution and integrity.
6. Moral Rights by Puerto Rico Law.
7. Protection against circumvention of technical protection measures.

How is a copyright created?

A creative work is protected by copyright the moment the work assumes a tangible form, which in copyright is referred to as “fixed in a tangible medium of expression”. The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device.

Who owns a copyright?

The copyright in the work of authorship immediately becomes the property of the author who created the work. Only the author or those deriving their rights through the author can rightfully claim a copyright.

With the three important exceptions, copyrights are owned by the writers, poets, musicians, choreographers, composers, artists, software designers, sculptors, photographers, movie producers, craftspeople and other people who create them. In copyright, these people are all called “authors”.

Now for the exceptions:

1. If a work is created by an employee in the course of his or her employment, the work is called a “work made for hire” and the copyright is owned by the employer.
2. If the work is specially ordered or commissioned (created by an author working as independent contractor), and the parties sign a written work made for hire agreement, the copyright will be owned by the commissioning party as long as the work falls within one of the statutory categories of commissioned works that can qualify as works made for hire.
3. If the author transfers the copyright to someone else, then this other person or business owns the copyright.

How to secure a Copyright?

Copyright secured automatically upon creation. No publication or registration or other action in the Copyright Office is required to secure copyright. Registering the work is not necessary to obtain basic copyright protection. However, there are certain definite advantages for registration, especially since registration establishes a public record of the copyright claim.

How long does copyright protection last?

Copyright protection subsists from the time the work is created in fixed form. For works originally created on or after January 1, 1978, the copyright protection lasts for the life of author plus 70 years