COPYRIGHT LAW

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COPYRIGHT LAW

Protects original works of creative expression in a tangible medium, including:

- literary works
- musical works
- dramatic works
- pantomimes & choreographic works
- pictorial, graphic, and sculptural works
- sound recordings
- architectural works
- software code
BASICS

- Original not novel: Independent creation of identical works is theoretically possible.
- Threshold for “creativity” is low.

- Not Protected:
  Ideas, procedures, process, systems, discoveries, facts, lists, names, simple directions
  But, the expression of these things in a tangible medium is protected
Non-functional

Something purely functional will not be protected

Expressive elements must be conceptually separable from the utilitarian elements
Exclusive Rights (17 USC 106)

- to reproduce, make copies
- to prepare derivative works—recast, transformed, or adapted
- to distribute copies
- to perform or display publicly
Who owns the copyright?

- the creator(s), unless
- the work is created by an employee in the scope of his or her employment, or
- the creation is subject to a work for hire agreement and is a contribution to a collective work (magazine articles, etc.), an audiovisual work, a translation, a supplementary work (illustrations to a text, or similar adjunct works), a compilation (collecting and arranging pre-existing works), an instructional text, a test, or an atlas.
WHEN and WHY REGISTER?

Copyright “attaches” automatically upon a work’s creation in a fixed tangible medium.

Registering a claim of copyright with the federal Copyright Office (copyright.gov) provides many benefits, including the ability to legally enforce your exclusive rights, and, if a work is registered prior to an infringement or within three months of initial publication, the copyright owner is entitled to enhanced damage awards, including attorneys’ fees, from an infringer.

Copyright protection extends across borders via international treaties, most significantly the Berne Convention.
Limitation on Exclusive Rights: FAIR USE

When the social utility of unauthorized copying exceeds the social utility of enforcing a copyright. Criticism and commentary (including parody), teaching, and news reporting are all examples of fair use.
Infringement

- the violation of one or more of a copyright holder’s exclusive rights

- a substantial (more than de minimis) taking of the protectable elements of a work

- copyright holder is entitled to an injunction, damages, destruction of infringing goods

- criminal sanctions for severe infringements
Length of Protection

- individual: life of author + 70 years
- Work for Hire (including employee-created works): 95 years
- Works created between 1923 and 1978: beware!

Date of First Publication

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<th>Date of First Publication</th>
<th>Description</th>
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<tr>
<td>Before 1923</td>
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<td>After 1922 &amp; Before 1978</td>
<td>If published without © notice</td>
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<td>After 1922 &amp; Before 1964</td>
<td>If published with © notice, but not renewed after 28 years</td>
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<td>After 1963 &amp; Before 1978</td>
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<td>After 1977 &amp; Before March 1, 1989</td>
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<td>After 1977 &amp; Before March 1, 1989</td>
<td>If published without © notice but registered within 5 years; or published with © notice</td>
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<td>On or after March 1, 1989</td>
<td>Published with or without © notice</td>
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<tr>
<td>Published after 2002</td>
<td>Created before 1978 and author died more than 70 years ago</td>
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Created by Individual or Joint Authors
Created under Corporate Authorship
Copyright, the Internet, and Digital Media

- same laws apply
- but the effectiveness of the laws are being severely tested
- most dramatically in music and film, but it transgresses all types of works subject to copyright protection
- when everyone has the most powerful copying machine ever known and is connected to the most powerful distribution network ever known, do the copyright laws as currently constructed and interpreted still make sense?

The issue is playing out with proposed laws like SOPA and PIPA, in the courts, and in developing multinational treaties, etc.