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## U.S. COPYRIGHT FAQs

The following is a list of frequently asked questions and answers about copyrights. This is meant to provide general guidance, and should not be considered an exhaustive treatment of any subject. In other words, if you have a specific question, you should seek legal advice.

### **What is protected by copyright?**

Virtually every original literary or artistic work is protected by copyright. For example, this includes books, magazines, newspapers, computer software, musical compositions, plays, sculptures, photographs, motion pictures, and paintings.

### **What does it mean to be “original”?**

A work is considered original for copyright purposes so long as it is independently created by the author. For this reason, copyright does not extend to factual collections, such as telephone directories, to blank forms, or to common geometric shapes.

### **How does the author obtain a copyright?**

For all works created after January 1, 1978, the author’s rights in the copyright to a work exist from the moment the work is fixed in tangible form. “Being fixed in tangible form” extends to computer RAM. For this reason, there is no copyright in a public performance which is not recorded in some manner.

### **Who is the owner of a copyright?**

The author of a work is the copyright owner with certain limited exceptions. This usually means the creator of the work owns the copyright. When a work is created in the course and scope of employment, that work is considered a “work made for hire” and the author is the employer. Certain commissioned works can also be considered works made for hire if the parties agree upon it in writing in advance of the work’s creation.

### **What if there is more than one author?**

It is possible to have a work of joint authorship if one or more parties intend to merge their creations into a single whole. Each must actually contribute to the work in tangible form. For example, two people may decide to jointly author a book and, in the resulting product, the

reader cannot tell which author wrote which sections of the book. A mere contribution of ideas or suggestions, however, does not constitute authorship.

### **What about a movie?**

Movies, or audiovisual works, are most often created as commissioned works for hire. Otherwise, everyone who contributed to it, cameraman, audioman, director, producer, actor, would become a joint author of the work.

### **What rights does the owner of a copyright have?**

The copyright owner has the exclusive right to do or to authorize any of the following:

- reproduce the work in copies or recordings (the “reproduction right”);
- prepare derivative works based upon the copyrighted work (the “derivative works right”);
- distribute copies or recordings of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending (the “distribution right”);
- in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly (the “performance right”); and
- 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, to display the copyrighted work publicly (the “display right”).

In addition, the authors of works of visual art have the right to claim authorship of the work and to prevent his name from being used with any work he did not create or which has been distorted, mutilated, or modified. Authors of works of visual art also have the right to prevent any intentional distortion, mutilation, modification, or destruction of the work. These rights apply whether or not the author of such a work is the copyright owner. These rights only apply to works of fine arts.

### **Who has these rights when there are joint authors?**

Any joint author may grant any of these rights on a nonexclusive basis to a third party independently of any other joint author. The joint author’s rights may also be assigned to a third party independently of any other joint author. A joint author may not grant an exclusive license, however. (You’re probably wondering about the “left-out” joint author(s); any income received by a joint author must be shared with the other joint author(s).)

### **What's a "derivative work"?**

A derivative work is one based upon one or more preexisting copyrighted works, including translations, abridgments, or any other form in which the original work might be modified or adapted. The changes to the original work must also be original and only the changes are protected in the copyright on the derivative work.

### **Who owns the copyright in the derivative work?**

The owner of the copyright in the original work has the exclusive right to authorize and to prepare derivative works. In the absence of any agreement to the contrary, the copyright owner of the original work will own the copyright in the derivative work.

### **Is there anything that isn't protected by copyright?**

A U.S. Government work (created by a government employee in the course and scope of his employment) is not protected by copyright. Prior to March 1, 1989, it was possible for works to fall into the public domain and lose copyright protection under certain circumstances. Since that date, the copyright owner has to dedicate the work to the public domain to lose the copyright. Copyrights also expire after a period of time and the works fall into the public domain. Ideas, processes, methods, forms, common geometric shapes, and merely functional devices are not protected by copyright.

### **So how long does a copyright last?**

The term of copyright protection has become very complicated. Accordingly, it is best to assume that any work capable of being protected by copyright is.

### **Where do ASCAP and BMI fit into all of this?**

ASCAP and BMI are performing rights societies. They are associations of copyright owners in musical works which serve as clearing houses to license the public performance of musical works. They offer a "blanket license" to hotels, restaurants, radio stations, and the like whereby a single fee is paid and the right to publicly perform any musical work of any of its members is conveyed.

### **What does it mean to perform a work "publicly"?**

A public performance occurs when a work is performed at a place open to the general public or at a place where a substantial number of persons outside of a normal circle of a family and friends are present. It also occurs if the work is transmitted by any means to such a place. Please note that whether a work is performed publicly does not depend upon whether any fee is charged for attendance.

### **What is a “common-law copyright”?**

Under prior U.S. law, a copyright was not protected by statute until the copyright was registered with the U.S. Copyright Office. So, the courts developed a doctrine of “common-law copyright” which protected a work in the absence of a registration. Since January 1, 1978, common-law copyright no longer exists because the work is protected by statute from the moment of creation and fixation in tangible form.

### **So I no longer have to register a copyright?**

That’s correct. You don’t have to register a copyright any more for the work to be protected by federal law. There are good reasons for doing so, however. For one thing, you cannot sue to enforce your rights under copyright unless you have a federal registration. For another, if you do have to sue an infringer, your remedies will be limited as to any acts of infringement which occurred before the copyright was registered. These rules do not apply, by the way, to any work created by a foreign national.

### **Do I need a copyright notice?**

Yes. It is no longer possible to lose your rights in a copyright by failing to put a proper notice on it. But, if you distribute the work without a notice and someone copies it, they will have a defense of “innocent infringement” to any infringement lawsuit you bring. Like copyright registration, however, this does not apply to works created by foreign nationals.

### **What is a proper copyright notice?**

© [year of creation] [name of copyright owner] for all works other than recordings of music. For music recordings (regardless of media): ® [year of creation] [name of copyright owner]. You can use the word “copyright” or the abbreviation “copr.” instead of © or ®.

### **What about “fair use”?**

“Fair use” is a defense to copyright infringement.