

Copyright Law

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What is Copyright?

- A monopoly,
 - created by law that gives exclusive rights to the author or creator of a work.
 - The copyright protection is bestowed immediately and automatically upon the creation of “original works of authorship” that are “fixed in any tangible medium of expression.”

Copyright Registration

- As of 1989, copyright laws changed and a work no longer needs to be registered.
- Protection is granted immediately upon creation.
- Assume everything is copyrighted.
- Copyright registration does have a legal effect, however.
 - Provides evidence of copyright ownership.
 - Allows a copyright holder to bring a lawsuit.
 - Is a requirement for the ability to bring a suit in Federal court.
 - Has bearing on what damages the copyright holder can get.

Who Owns Copyright?

- The general rule is that the person who does the creative work owns the copyright.
- Variations
 - Two or more authors can own a single copyright jointly.
 - Someone might create a new work, but if it is a work made for hire, the copyright belongs to the employer.
 - Copyright owner may transfer the copyright.

Exclusive Rights of Copyright Holder

- Right to make copies
- Right to distribute copies.
- Right to publicly perform.
- Right to publicly display.
- Right to prepare derivative works based upon the original work.

Exceptions to the Rights of Copyright Owners

- Fair Use.
- Library copying.
- The First Sale Doctrine.
- Exception for public display.
- Displays and performances in face-to-face teaching.
- Displays and performances in distance learning.
- Computer software.
- Architectural works.
- Special formats for persons who are blind or have other disabilities.

What is Copyrightable? (An illustrative, not exhaustive, list.)

- Literary works.
- Musical works, including accompanying words.
- Dramatic works, including accompanying music.
- Pantomimes and choreographic works.
- Pictorial, graphic, and sculptural works.
- Motion pictures and other audiovisual works.
- Sound recordings.
- Architectural works.

What is NOT Copyrightable?

- Works in the public domain.
- Facts and discoveries.
- Compilations and databases.
- Works of the U.S. Government.
- Works that are not in a tangible form of expression.
- Titles, names, short phrases, and slogans.
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices.

Fair Use

- Allows the public to make limited use of copyrighted works for purposes such as criticism, comment, news reporting, teaching, scholarship, or research.
- Created deliberately by Congress to fill the gaps where exceptions in the law do not go far enough.
- Can be used in tandem with other exceptions in the law.

Using Fair Use: The Four Factors

- When determining whether the use made of a work is fair use, consider the following four factors:
 - The purpose and character of the use, including whether such use is of a commercial nature or 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.

Factor One: The Purpose and Character of the Use

- Whether the use of a copyrighted work “is of a commercial nature or is for nonprofit educational purposes.”
- Transformative Uses
 - May occur when the work is altered or transformed into something new.
 - When the work is used in a new manner or context, distinct from the intended uses of the original.
- Multiple Copies
 - Allowed for classroom use.

Factor Two: The Nature of the Copyrighted Work

- Fiction and Nonfiction
 - Fair use applies most generously to published works of nonfiction.
 - By contrast, copyright law gives greater protection for works of fiction.
- Consumable and Out-of-Print Works
 - Publishers often produce and sell workbooks with the expectation that they will be fully consumed and repurchased with each use.
 - Out-of-print works may become an obsolete concept as digital copies become the norm.

Factor Three: The Amount and Substantiality of the Portion Used

- Quantity and Quality
 - No exact measure of allowed quantity exists in the law.
 - Rules about word counts and percentages have no place in the law of fair use.
 - Appropriate amount can depend on the nature of the work.
 - Shorter excerpts are more likely than longer pieces to be within fair use.
 - Although sometimes, the smallest phrase may be the “heart of the work” and not be considered fair use.

Factor Four: The Effect of the Use on the Market

- Encompasses whether the use harms the market for the work or its value.
- Questions to ask:
 - How is the work actually marketed?
 - What are the realistic potential markets?
 - Is the work realistically marketed for my needs and uses?
 - Am I harming or inhibiting that market potential?
 - Am I replacing a sale?
 - Are my market effects significant?
 - Would the market effects be significant if uses like mine were widespread?

Principles for Working with Fair Use

- Fair use is a balancing test. Ask yourself if the factors lean in favor of or against fair use overall.
- Fair use is highly fact-sensitive.
- Don't reach hasty conclusions. Evaluate all factors.
- If your use is not “fair”, don't forget there are other statutory exceptions to the rights of owners.
- If your use is not within any of the exceptions, permission from the copyright owner is an important option.
- Fair use is relevant only if the work is protected by copyright.

Test your knowledge!

What have you learned?

Question #1

Which of the following rights does NOT come with copyright?

- a. The right to make copies of the work.
- b. The right to make sequels.
- c. The right to display or perform the work in public.
- d. The right to tell someone who buys your work that they can't destroy it.

Answer #1

- **Answer is: d. The right to tell someone who buys your work that they can't destroy it.**
- Copyright itself doesn't give you any say in what a buyer does with your physical piece once they buy it.

Question #2

Only materials with a copyright symbol, ©, are protected. If it doesn't have the symbol, you can make copies and share with others.

- a. True.
- b. False.

Answer #2

- **Answer is: False**
- A work does not need a copyright symbol to be protected. Once it is in a tangible medium, it is covered.

Question #3

Which of the following would NOT gain copyright protection?

- a. A DVD.
- b. An unrecorded speech.
- c. Written lyrics of a song.
- d. A hand knit sweater.

Answer #3

- **Answer is: b. An unrecorded speech.**
- Because the speech is not a tangible form of expression, it would not gain protection.

References

- *For additional information:*
- U.S. Copyright Office (2017). *Copyright basics* (circular 1). Retrieved from <https://www.copyright.gov/circs/circ01.pdf>
- U.S. Copyright Office (n.d.). *Legislative developments*. Retrieved from <https://www.copyright.gov/legislation/>
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