

Guide to Intellectual Property and Copyright

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Intellectual Property and Copyright

What is Intellectual Property?

Intellectual property is an umbrella term encompassing both copyright and industrial property, such as trademarks, patents, and inventions. Intellectual property law exists in order to protect the creators and covers areas of copyright, trademark law, and patents.

What is Copyright?

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 intellectual works. This protection is available to both published and unpublished works. No publication or registration or other action in the Copyright Office is required to secure copyright.

What is the Copyright Act?

The Copyright Act of 1976 provides a basic framework for current Copyright law. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and authorize others to do the following (*all information in this section sourced from the U.S. Copyright Office (<http://www.copyright.gov/> and <https://www.copyright.gov/title17/title17.pdf>)*):

- To reproduce the work in copies or phonorecords; a phonorecord is defined by the United States Copyright Act of 1976 to be a material object in which sounds (other than those accompanying a motion picture or other audiovisual work) are fixed by any method now known or later developed and can be perceived, reproduced, or otherwise communicated;
- To prepare derivative works based upon the work;
- To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
- To display 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; and
- In the case of sound recordings, to perform the work publicly by means of a digital audio transmission.

Who can claim copyright?:

Copyright protection subsists from the time the work is created in fixed form. 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 copyright.

According to Chapter 2, section 201 of Copyright Law (Title 17, U.S. Code, in the case of works **made for hire**, the *employer* (or other person for whom the work was prepared) and *not the employee* is considered to be the author of the work and owns all the rights comprised in the copyright, unless the parties have expressly agreed otherwise within a written document signed by all parties.

Section 101 of the copyright law defines a "work made for hire" as

1. A work prepared by an employee within the scope of his or her employment; or
2. (If the parties expressly agree in written document signed by all parties) A work specially ordered or commissioned for use as:
 - a contribution to a collective work
 - a part of a motion picture or other audiovisual work
 - a translation
 - a supplementary work

- a compilation
- an instructional text
- a test
- answer material for a test
- an atlas

The authors of a joint work are **co-owners** of the copyright in the work, unless there is an agreement to the contrary. Copyright in each separate contribution to a periodical or other collective work is distinct from copyright in the collective work as a whole and vests initially with the author of the contribution.

How do “works made for hire” apply to internships?

If an intern is paid, copyright law applying to them will fall under “works made for hire.” In other words, the author of a work created by a paid intern is the employer, not the intern; the employer owns all the rights in the copyright, unless there exists a signed contract stating otherwise. In short, if an intern is being paid for their work either by an hourly wage, stipend, or project fee, that intern *does not own* the copyright on the work that they produce in relation to their internship duties.

Internship Best Practice: If an internship is paid, the intern should ensure they discuss with their supervisor whether or not the internship site (employer) will provide permission for the intern to include any work(s) within their portfolio. As the site will own all rights to the work produced by the intern, the intern must receive express, written permission from the employer outlining the intern’s ability to include this work within their portfolio or replicate it/present it anywhere else independent of the employer.

If an intern is unpaid, they have first copyright to work they create as a “volunteer.”

- Rules around “works made for hire” do not apply to volunteers. Any time a volunteer creates a copyrightable work, the Copyright Act confers the exclusive ownership of the work to the volunteer. However, copyright ownership can be reversed by a written and signed agreement between the organization and the volunteer. In short, if an internship is unpaid, the intern is considered a ‘volunteer’ and owns the copyright on works they produce in relation to their internship unless the intern and internship site sign an agreement to the contrary.

Two General Principles of Copyright:

1. Mere ownership of a book, manuscript, painting, or any other copy or phonorecord does not give the possessor the copyright. The law provides that transfer of ownership of any material object that embodies a protected work does not of itself convey any rights in the copyright.
2. Minors may claim copyright, but state laws may regulate the business dealings involving copyrights owned by minors. For information on relevant state laws, consult an attorney.

Copyright and national origin of the work:

Copyright protection is available for **all unpublished works**, regardless of the nationality or domicile of the author. **Published works** are eligible for copyright protection in the United States if any one of the following conditions is met:

- On the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a treaty party, or is a stateless person wherever that person may be domiciled; or
- The work is first published in the United States or in a foreign nation that, on the date of first publication, is a treaty party. For purposes of this condition, a work that is published in the United States or a treaty party within 30 days after publication in a foreign nation that is not a treaty party shall be considered to be first published in the United States or such treaty party, as the case may be; or
- The work is a sound recording that was first fixed in a treaty party; or

- The work is a pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party; or
- The work is first published by the United Nations or any of its specialized agencies, or by the Organization of American States; or
- The work comes within the scope of a Presidential proclamation.

What works are protected?:

Copyright protects “**original works of authorship**” that are fixed in a tangible form of expression. The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device.

Copyrightable works include the following categories:

1. Literary works;
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
6. Motion pictures and other audiovisual works
7. Sound recordings
8. Architectural works

These categories should be viewed broadly. For example, computer programs and most “compilations” may be registered as “literary works”; maps and architectural plans may be registered as “pictorial, graphic, and sculptural works.”

What is not protected by Copyright?

Several categories of material are generally **not eligible** for federal copyright protection. These include among others:

- Works that have not been fixed in a tangible form of expression (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded)
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration
- Works consisting entirely of information that is common property and containing no original authorship (for example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources)

How to secure a Copyright:

COPYRIGHT SECURED AUTOMATICALLY UPON CREATION:

The way in which copyright protection is secured is frequently misunderstood. No publication or registration or other action in the Copyright Office is required to secure copyright. (See following Note.) There are, however, certain definite advantages to registration. See “Copyright Registration.”

Copyright is secured automatically when the work is created, and a work is “created” when it is fixed in a copy or phonorecord for the first time. “Copies” are material objects from which a work can be read or visually perceived either directly or with the aid of a machine or device, such as books, manuscripts, sheet music, film, videotape, or microfilm. “Phonorecords” are material objects embodying fixations of sounds (excluding, by statutory definition, motion picture soundtracks), such as cassette tapes, CDs, or LPs. Thus, for example, a song (the “work”) can be fixed in sheet music (“copies”) or in phonograph disks (“phonorecords”), or both.

If a work is prepared over a period of time, the part of the work that is fixed on a particular date constitutes the created work as of that date.

Publication:

Publication is no longer the key to obtaining federal copyright as it was under the Copyright Act of 1909. However, publication remains important to copyright owners.

The 1976 Copyright Act defines publication as follows:

“Publication” is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display constitutes publication. A public performance or display of a work does not of itself constitute publication.

Publication is an important concept in the copyright law for several reasons:

- Works that are published in the United States are subject to mandatory deposit with the Library of Congress. See discussion on “Mandatory Deposit for Works Published in the United States.”
- Publication of a work can affect the limitations on the exclusive rights of the copyright owner that are set forth in sections 107 through 121 of the law.
- The year of publication may determine the duration of copyright protection for anonymous and pseudonymous works (when the author’s identity is not revealed in the records of the Copyright Office) and for works made for hire.
- Deposit requirements for registration of published works differ from those for registration of unpublished works. See discussion on “Registration Procedures.”
- When a work is published, it may bear a notice of copyright to identify the year of publication and the name of the copyright owner and to inform the public that the work is protected by copyright. Copies of work published before March 1, 1989, must bear the notice or risk loss of copyright protection.

For further information on copyright issues:

The US Copyright Office at <http://www.copyright.gov> and <https://www.copyright.gov/title17/title17.pdf>