

Copyright Law

by Sophia



WHAT'S COVERED

In this lesson, you will learn about copyright as a type of intellectual property. Specifically, this lesson will cover:

1. What Can Be Copyrighted?

Like patents and trademarks, federal law protects **copyright**. Whereas trade secrets protect confidential company information, patents protect processes and inventions, and trademarks protect brands and identity, copyright is designed to protect creativity.

It is one of the two types of intellectual property specifically mentioned in the **Copyright Clause of the U.S. Constitution**. Of course, back then the only works copyrighted would have been songs, art, or works in writing. Today, copyright extends to any form of creative expression, including digital forms.

IN CONTEXT

If asked to write down four numbers from one to fifty in random sequence, most of us would write four different numbers. The process of picking those numbers requires creativity, so the sequence of the four numbers you write down is copyrighted. Note that the numbers themselves aren't copyrighted, of course. It's just the unique sequence that you choose, the expression of your creativity, that is copyrighted.

Since computer software is a compilation of binary code expressed in 1 and 0, all software is copyrighted. On the other hand, sequential page numbers or listings in a phone directory show no creativity and are therefore not copyrightable. Similarly, if a group of students were given a camera and each was asked to photograph the same subject, each student would come up with a different photograph. Each student would frame the subject differently, and that is an expression of creativity.

Finally, consider the notes that you take for this course. A group of students could read the same lessons and come up with different sets of notes. Each work is unique and demonstrates creativity, so each is copyrighted.

A work must be original (not copied) and fixed in **adurable medium** to be copyrighted. This requirement exists because it would be impossible to prove, without a durable medium, who the original author of a work

is. Ideas, by themselves, cannot be copyrighted.

➞ **EXAMPLE** If you had an idea for a novel about a boy wizard who goes to a boarding school with his friends and battles evil monsters while growing up, that would not be copyrighted. If you wrote a novel featuring such a story line, however, you would run the risk of violating the copyrighted Harry Potter works.

CASE STUDY: *Baigent v. Random House Group*

A similar dispute arose in 2006 after the blockbuster success of Dan Brown's novel *The Da Vinci Code*. Two authors, Michael Baigent and Richard Leigh, claimed the novel infringed on their copyrighted book, *Holy Grail Holy Blood*. In their book, the authors theorized that Jesus survived his crucifixion, married Mary Magdalene, and had children. The British judge hearing the case dismissed the claims, holding that the theory was "too general or too low a level of abstraction to be capable of protection by copyright law."



TERMS TO KNOW

Copyright

Exclusive right granted to authors or creators of original works placed in a tangible medium, such as literary, choreographic, musical, dramatic, pictorial, sculptured, audiovisual, etc. works. Ideas alone are not copyrightable.

Copyright Clause of the U.S. Constitution

Located in Article I, Section 8, enumerating multiple powers of Congress, this clause states, "The Congress shall have power to... promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries...."

Durable Medium

A fixed physical location for a work to be copyrighted. An idea that exists solely in a person's mind, therefore, cannot be copyrighted.

2. Length of Protection

A copyrighted work is automatically copyrighted upon its creation. Unlike patents and trademarks, which must go through an expensive and rigorous application and approval process with the government, authors do not need to send their work to the government for approval.

Although it's a good idea to write "Copyright" or place a © symbol on the work, it's not legally required. Registration of the copyright, however, is required in order to bring a lawsuit for infringement.

Copyright protection lasts for 70 years after the death of the author. If there is more than one author, the copyright expires 70 years after the death of the last surviving author.

If a company, such as a publisher, owns a copyrighted work, the copyright expires 95 years from the date of publication, or 120 years from the date of creation, whichever comes first. After copyright expires, the work

falls into the public domain.

IN CONTEXT

The works of Shakespeare, Bach, and Beethoven, for instance, are in the public domain. They may be freely recorded, performed, or modified without permission.

If you were to record yourself reciting Shakespeare's "To be or not to be" speech from *Hamlet*, however, that recording is copyrighted as a new creative expression even though the underlying work - *Hamlet* - is in the public domain. Classical music recordings are similarly copyrighted under the same concept.

3. Licensing

The owner of a copyright may allow members of the public to view or use a copyrighted work, for free or for a fee. This use is contained in a copyright **license**, sometimes called an End User License Agreement (EULA) for software.

A license is essentially permission from the copyright holder to violate the copyright, within the terms of the license.

IN CONTEXT

When you purchase a physical book or CD or DVD, the copyright license allows you to view the movie, listen to the music, or read the book in private. The license does not allow you to show the movie in class to a broad audience, or to record the music onto your computer and then modify it, or to run photocopies of the book to give away or sell.

These rights of reproduction, exhibition, and sale are not part of the license you received and are reserved by the copyright holder. Of course, you may purchase those rights if you wish, but they will probably cost a lot more than the price of the book or disc. Some organizations advocate for the creation of a common license that authors can easily refer to if they wish to distribute their work easily. The General Public License (GPL) for software and Creative Commons (CC) license for text and media are well-known examples.

One right that you do have, however, in spite of any language in the license, is the right of first sale. Essentially this means that as the owner of the physical work, you can do with it as you please, including resell the original work.

Licenses in the digital arena can be very restrictive if you purchase digital media. Copyright holders may use schemes such as **Digital Rights Management (DRM)** to limit your ownership rights in digital media.

DRM limits the number of copies and devices a digital file can be transferred to, and in some cases even permits the copyright holder to delete the purchased work.

➞ **EXAMPLE** Amazon.com recently deleted digital George Orwell books from owners who had purchased the works for their Kindle reading devices without any prior notification. This would have been impossible if the books were in a physical form. Although Amazon.com was within its rights to do so, the public outcry that followed made Amazon.com promise to not engage in such behavior again in the future.



TERMS TO KNOW

License

Permission to use intellectual property granted under the terms of a contract.

Digital Rights Management

Restrictions on the use of digital software built into the software allowing the copyright owner to have control over the work after it is purchased by the end user.

4. Copyright Infringement

Copyright infringement occurs when someone uses a copyrighted work without permission or violates the terms of a copyright license.

➞ **EXAMPLE** If a classmate takes your class notes without your permission and makes photocopies of them, the classmate has infringed on your copyright.

It's also copyright infringement if you take someone else's work and simply repackage it as your own.

IN CONTEXT

This happened recently to Harry Potter author J. K. Rowling. Her books created a huge fan following, and many fans gather online to discuss the series. One such site is the Harry Potter Lexicon, run by Steve Vander Ark, a former school librarian. The site serves as an encyclopedia to the Harry Potter world, with reference notes on characters, places, spells, and other details.

When Vander Ark announced plans to publish the contents of the Lexicon in a book format, J. K. Rowling sued, claiming copyright infringement. The judge agreed and ordered the Lexicon rewritten so that it uses less material from the copyrighted work.

Copyright infringement also occurs when you assist someone in violating a copyright, or create a device that assists in violating a copyright.

➞ **EXAMPLE** Websites such as the former Napster and Grokster, which existed solely for the purpose of facilitating illegal downloading of music, were held to be infringers even though the websites themselves didn't violate any copyrights.

Similarly, if you make digital media available for download for others, you are not engaged in illegal downloading but still liable for **contributory infringement**. The recording industry, which in past decades was battling for its very survival in a new file-sharing world, pursued these cases aggressively.

➞ **EXAMPLE** In June 2009, a court in Minnesota ordered Jammie Thomas to pay \$80,000 per song for making 24 songs available for download, for a total fine of \$1.92 million. In September 2009, the

industry won a \$675,000 verdict against a college student in Massachusetts for file sharing 30 songs. Devices that can be used for purposes other than violating copyrights (such as photocopiers, video/DVD burners, and peer-to-peer networks used for sharing research) are not considered infringing devices.



TERM TO KNOW

Contributory Infringement

A type of indirect infringement on intellectual property that enables or assists others in directly committing infringement.

5. Fair Use

Copyright law makes a distinction between **fair use** and infringing use of a copyrighted work. A fair use includes copying a work for purposes of commentary, criticism, news reporting, teaching, or research. Just because a work is used in a news article or in a classroom, however, does not make its use fair.

The law provides four factors that courts must consider in determining whether or not the use is fair:

1. The court must consider the purpose and character of the use. Is it for educational purpose, or for making a profit?
2. The court must consider the **nature of the copyrighted work**. Is the work part of the “core” of the intended protection that copyright provides?
3. The court must consider the amount and substantiality of the portion used. This is an important factor—it’s one thing for your professor to copy an excerpt from a journal or book for distribution in class (probably fair) and another to copy the entire journal or book (probably infringing).
4. The court must consider the effect of the use on the potential market for the copyrighted work. If the use is considered fair, what would it do to the market for the copyrighted work? For instance, if copying an entire textbook is fair, it would probably eliminate the market for new textbooks.

In an attempt to tackle the problem of copyright infringement on the Internet, Congress passed the Digital Millennium Copyright Act (DMCA) in 1998. One portion of the law helps Internet service providers by expressly stating that those providers can’t be sued for copyright infringement if others use their networks for infringing uses.

Another portion of the law helps websites by stating that if a website user uploads infringing material and the website complies with a copyright holder’s request to remove the material, the website won’t be liable for infringement.

➞ **EXAMPLE** If you upload a portion of a copyrighted song, movie, or television show to YouTube, you may find that YouTube has removed your clip at the request of the copyright holder.

Finally, the DMCA makes it illegal to attempt to disable a copy protection device.

➞ **EXAMPLE** DVD and Blu-ray Discs are copy protected to prevent them from being copied easily. Anyone who writes software (even if the software is distributed for free) that disables this copy protection device is violating the DMCA.



TERMS TO KNOW

Fair Use

A defense to infringement of intellectual property. May include use for solely educational and nonprofit purposes, using only a small portion of the work, parody, satire, comedy, commentary, news reporting, or criticism of the work.

Nature of the Copyrighted Work

One of the considerations involved in determining if use of protected intellectual property is fair use that looks at whether the portion used goes to the core of the work or only represents a small portion of the whole work.



SUMMARY

In this lesson, you learned that any original creative work fixed in a durable medium **can be copyrighted**. Copyright protection does not require prior government approval, and the **length of protection** is generally 70 years after the death of the author. Copyright owners can **license** others to use their works while retaining full rights of ownership. Digital works are fully protected by copyright and may be encrypted with digital rights management schemes. **Copyright infringement**, both direct and contributory, is a serious civil violation that can result in heavy monetary penalties. **Fair use** is a defense to copyright infringement.

Best of luck in your learning!

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