

COPYRIGHT LAW – AN OVERVIEW

- **What are the sources for copyright law?**
 - In the United States, the Constitution's Patent and Copyright Clause provides that "The Congress shall have the 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." Art. 1, sec. 8, cl. 8.
 - The modern legal framework for copyright protections is found in the Copyright Act of 1976, as amended, which is codified in Title 17 of the United States Code.
- **What is a copyright?**
 - A copyright is a legal right that is granted to the creator of an original work to give the creator exclusive rights for the use and distribution of that original work. In other words, a copyright holder can prohibit other people from using an original work without the copyright holder's permission.
 - The duration of this legal right depends on the type of authorship of the work:
 - For a known author, the copyright lasts the length of the author's life plus 70 years.
 - For anonymous and pseudonymous works, and for works made for hire, the copyright lasts for 95 years after the date of first publication or 120 years after creation, whichever comes first.
 - Once a copyright expires, the work becomes part of the public domain.
- **What can be copyrighted?**
 - Copyright protections extend to "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device."
 - According to statute, works of authorship include the following categories:
 - Literary works
 - Musical works, including any accompanying words
 - Dramatic works, including any accompanying music
 - Pantomimes and choreographic works
 - Pictorial, graphic, and sculptural works
 - Motion pictures and other audiovisual works
 - Sound recordings
 - Architectural works
 - To be considered "original," the work must be independently created by the author, not just copied from another work, and it must possess at least a minimal degree of creativity.
- **How do you get a copyright?**
 - Any work that qualifies as an original work of authorship is protected by federal copyright from the moment it is fixed in a tangible medium of expression, without regard to whether the work has been registered or bears a copyright notice (e.g. the "©").
 - However, the copyright owner is generally required to register the copyright to be able to enforce the owner's exclusive rights in an infringement proceeding.
 - In addition to registering the copyright with the U.S. Copyright Office, a copyright holder must provide a deposit to the U.S. Copyright Office when the copyright holder applies for registration or publishes the work.
 - "Publication" generally refers to making copies of a work of authorship available to the general public.
 - An additional point: the requirements for obtaining a copyright under the 1909 Act were a lot stricter, and failure to follow the requirements exactly could trigger harsh consequences, up to the loss of copyright protection entirely. The requirements of the 1909 Act would be

applicable to a work that was created and published prior to the effective date of the 1976 Act, while a work that was created prior to but published after the 1976 Act's effective date would be subject to the requirements of the 1976 Act.

▫ **Who can obtain a copyright?**

- Copyright ownership is created through the authorship of an original work.
- A copyright can be transferred through assignment or inheritance, and it can also be licensed, both exclusively and non-exclusively. However, a transfer is only effective if it is made in writing.

▫ **What are the exclusive rights granted to a copyright holder?**

- The owner of a copyright has the exclusive right to do and authorize the following:
 - Reproduce the copyrighted work in copies
 - Prepare derivative works based on the copyrighted work
 - NOTE: a derivative work is something that is based on one or more preexisting works, which themselves may be protected by copyright or may be in the public domain. Copyright in the derivative work is independent of copyright in any underlying work. Each case must be analyzed individually to determine whether the derivative work is a "substantial variation" from the original that warrants its own copyright protection, or whether the derivative work is merely a copy.
 - Distribute copies to the public by sale or by rental, lease, or lending
 - In the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures or other audiovisual works, to perform the work publicly
 - In the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, to display the work publicly
 - In the case of sound recordings, to perform the work publicly by means of a digital audio transmission
- In practice, this means the copyright owner has a right to exclude others from engaging in these activities

▫ **How does a copyright holder protect or enforce these rights?**

- With limited exceptions, a copyright holder may not institute a copyright infringement suit until the copyright has been registered or preregistered with the Copyright Office.
- To establish a prima facie case of infringement of an exclusive right, the plaintiff must demonstrate:
 - ownership of the right asserted; and
 - unauthorized appropriation by the defendant of a material amount of the plaintiff's copyrighted work.
- If a copyright holder wins a lawsuit for infringement, available remedies include: temporary and permanent injunctions; impounding and destroying the infringing articles; excluding foreign articles by U.S. Customs; and monetary damages, which may include actual damages and profits, statutory damages, and costs and attorney fees.
- There is also an avenue for criminal prosecution of copyright infringement, and the potential penalties upon conviction include a prison term, a fine, or both.

▫ **Are there exceptions or limitations to copyright protections?**

- Limitations on the exclusive rights:
 - Reproduction and distribution by libraries and archives: there is a limited exception to the copyright holder's exclusive rights of reproduction and distribution when a library or archive needs to maintain or preserve its collection.

