

## The Plain & Simple

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### The Internet and Copyright

The Internet poses ever evolving new issues for copyright law, as it allows for copyrighted material to be easily and inexpensively reproduced and instantaneously distributed and in many instances, pirated worldwide. The result is that copyright infringement of this type can substantially reduce revenues to the copyright holder. It is obviously illegal to post copyrighted material on the Internet without prior consent, but how can such violations be regulated, prevented and banned? We must bear in mind the difficulty in locating the person who has posted the copyrighted material, and also, the difficulty in locating all the websites that are infringing on the copyright, as there can be many.

What is a copyright owner to do when he or she finds that his or her copyright is being infringed upon on the Internet? Larger companies often find it economically efficient to seek traditional but costly remedies of litigation. What can a lone copyright holder do to protect a copyright?

First and foremost, the copyright holder should register their copyright with the U.S. Copyright Office, as it is a prerequisite to filing a copyright infringement action and is also prima facie evidence of ownership. This can be done easily and inexpensively by using the forms on the Copyright Office's website at [www.copyright.gov](http://www.copyright.gov).

Second, the copyright owner should give **notice** of copyright infringement as per the U.S. Copyright Act. This notice must be a written communication provided to the owner or designated agent of a service provider or other online infringer. This written communication must contain certain specific information required by the Copyright Act in order to be effective. If you can't determine who the actual owner of the website is, you can provide such notice to the Internet Service Provider (ISP), such as Yahoo or Microsoft, which hosts the website, and require it to take the appropriate steps to fix the problem. If the written notice contains the proper information and the ISP fails to take the appropriate steps to fix the infringement, the ISP itself can be liable for copyright infringement.

However, it may be useful to consider that the distribution of copyrighted material on the Internet may be an inexpensive and valuable advertising tool. Therefore, a copyright owner may not necessarily want to stop widespread distribution of his or her material on the Internet. Rather, the copyright holder may want to contact the ISP or website owner and require that the work be used legally, and that proper credit be given for the work.

Alternatively, a copyright owner can take the traditional route to stop and get damages for unwarranted distribution by filing an action for infringement and related causes of action. The Supreme Court recently held that one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is **liable** for the resulting acts of infringement by third parties.

#### Remedies:

If the copyright owner successfully proves infringement of copyright, the remedies may include injunction and if relevant, impounding and disposing of infringed articles. Damages range from a low of \$200 for unintentional infringement to a high of \$150,000 per intentional "infringement", as well as attorney's fees and costs. Moreover, any person who is found to have *willfully* infringed a copyright may additionally be subject to fines and even imprisonment.

## How Long is Copyright Protection? A Summary

So, exactly how long are copyright works protected in the U.S.? When do things go into the public domain to be used freely by everyone? The law keeps changing and it seems confusing so here is a current summary. There are two different categories of authors and three different time periods. The two different categories are (1) works created by the author for his own benefit or (2) "works made for hire" for an employer or another party and anonymous or pseudonymous works. The length of time that a work is afforded copyright protection depends on the date the work was created and also upon the dates of publication and registration.

Under prior law, works created before January 1, 1978 which were published or registered before that date, were originally protected for a term of 28 years from the date it was secured and were eligible for renewal. However, the Copyright Act of 1976 and more recent legislation further extended the renewal term of copyrights already registered and existing on January 1, 1978 by an additional 20 years, providing for a renewal term of 67 years and a total term of 95 years.

Works originally created before January 1, 1978, yet not published or registered by that date, have been automatically brought under Title 17 and are now granted federal copyright protection as well. Such original works will be protected for the life of the author plus 70 years after the author's death. A work made for hire, anonymous, or pseudonymous work will be protected for 95 years from publication or 120 years from creation, whichever is less.

Today, any original work created on or after January 1, 1978, is automatically protected by copyright from the moment of creation and is ordinarily given terms lasting for the author's life plus an additional 70 years after the author's death. If it is a work made for hire, anonymous, or pseudonymous work, it will be protected for 95 years from publication or 120 years from creation, whichever is less.

Reversion of certain works created on or before January 1, 1978, under certain circumstances, including possibly ownership of "works made for hire" may be recaptured by the actual author or his/her heirs after the author's death. These recaptured rights can also include licenses and other grants of rights in these works. However, the timing for asserting these reversion rights, who can assert these rights and when they need to be asserted are very particular and somewhat complicated. If not followed precisely, this limited window of opportunity to recapture certain rights can irrevocably close.

## A Common Misconception

Surprisingly, many authors are in the habit of filing their work with the Writers Guild of America and believe somehow that their work is officially requested for copyrighted; that is incorrect. In order to fully protect your work it is imperative to file such works for registration with the U.S. Copyright Office. Registration with the Copyright Office has several unique benefits and purposes. A few of them are: an extremely strong presumption that the ownership and other information on the application form are true statements of the author and claimant of the work; another is that registration with the U.S. Copyright Office is a prerequisite to filing a lawsuit to protect the work against copyright infringement. These registration forms can be found at [www.copyright.gov](http://www.copyright.gov).

Please contact Caitlin Velez at (212) 672-3747 or [newsletter@dslip.com](mailto:newsletter@dslip.com) with any questions or comments.

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