

# The Law of Copyrights

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The framers of the Constitution obviously considered the issue of protection of ideas of inventors, artists, and writers in stating that “Congress shall have Power to... promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors the Exclusive Right to their respective Writings and Discoveries.” There is nothing further said within the constitution about different issues like what these “exclusive rights” entail, but the wording of this clause clearly shows the intent to protect the author’s rights. The new Congress almost immediately passed the Copyright Act of 1790, which gave protection to authors of charts, books, and maps over the course of an original fourteen year period. It was renewable for an additional fourteen years if the author survived the first term. At the end of the nineteenth century, the Act had been expanded to include protection of a much wider scope of artistic work. The Copyright Act of 1909, though, began a trend of changes that began to move copyright laws gradually closer to what they are today (Hoffman 5-9).

So what does this all mean? During my research, I devised a series of questions to help guide me through this process. These questions are: What really is a copyright? How do you get a copyright and who is entitled to own one? What are the “exclusive rights” of a copyright owner? How do I avoid getting in trouble? What can and cannot be copyrighted? I planned on dissecting the world of copyright law and rearranging it into a more manageable image.

Let's begin with the simplest question. What really is a copyright? Although the terms are commonly interchanged, the difference between patents, trademarks and copyrights is actually quite large. A trademark is used to protect brand names and designs that distinguish different products and services. For example, Chevrolet is a trademark used to identify an automobile manufactured by the particular company: General Motors. A patent is only used to protect inventions having to do with "chemical compounds, electrical processes, mechanical articles, designs of mechanical articles, and horticultural plants (Weinstein 4-5)." The word "copyright" and the phrase "copyright protection" both refer to the type of legal protection granted to a copyright owner under the Copyright Act of 1976. A copyright owner is the owner of the rights recognized by this particular act (Goldfarb 47). Copyrights have nothing to do with either inventions or trademarks.

So what *can* be copyrighted? The Writer's Lawyer states that a copyright can be made on almost any work that is both original and fixed. Fixed is a term that refers to its tangibility. A story can only be copyrighted if it exists on disc or paper but not if it has been told orally. Even a letter is technically copyrighted by the writer, and cannot be published without the permission of the one who wrote it. Any one could easily note that many unoriginal works have been copyrighted. But the term "originality," in a legal sense, only means that it must have been made solely by the creator, not copied from another person. It really is not a judgment of a work's uniqueness. It's a question of fact (Goldfarb 48-49).

What can't be copyrighted? Well, as stated earlier, anything that has been copied from someone else, or is not a fixed form of expression. But besides that, there are

several exceptions to be noted that fall within the literary world. These include: titles, names, ideas, procedures, methods, systems, concepts, and facts. It may seem absurd for some of these, but really, they are quite legitimate. The Copyright Act may not be able to protect an idea, theory, or fact, but it can definitely protect a particular expression of any of these. Therefore, the concept of a particular story, like boy meets girl etc, cannot be copyrighted, but the exact words used to express a particular story can be copyrighted. Just think, if only one author could write creative non-fiction based on an event like World War II, or growing up in the suburbs, our world would be seriously lacking in the field of literature (Goldfarb 50-51).

So how do you get a copyright and who is entitled to own one? Before the 1976 Law, a copyright needed to be registered or published in order to secure it. However, now it has been ruled that the moment you put down a pen or take your hands away from the computer, what you were working on is under your copyright ownership (Goldfarb 58). David Weinstein states that “rights are automatically acquired by creating material eligible for copyright protection.” He says it isn’t necessary for a government agency to grant copyright protection, but there are a few benefits to doing so. One example: you cannot file an infringement suit without having registered a work (Weinstein 5-6). These self copyright ownership rules apply unless you were working with another or your creation is a work-for-hire. In the first of these two cases, the copyright ownership is considered joint, and each author owns an undivided interest. For example two authors each hold half, three each hold a third. Each author owns the rights, and does not need the other’s opinions when exercising those rights with the piece (Goldfarb 58-59). Under three different circumstances is something considered work-for-hire. If the work is

created by an employee “within the scope of their employment,” the writings were “specifically ordered or commissioned for use as a contribution to a collective work” like a newspaper, or obviously if there’s a written agreement declaring the work being done to be considered “for hire” (Weinstein 41-42). An easy example for the first of these three would be a newspaper employee who is paid in monthly salaries, vacations, benefits, and such. His work, as with those in any work-for-hire situation, is under the copyright ownership of the employer. As with most law practices, there are, of course, complicated exceptions to these statements.

What are these “exclusive rights” of a copyright owner? A copyright owner has five exclusive rights that last until fifty years after their death. They include the right to: reproduce, create variations of, distribute publicly, perform publicly, and display the creative work publicly. To create variations of is a very important right that includes translations of the work into film, other languages, and screen plays. All of these rights can be authorized to others (like publishers or theaters, film houses, and such) by the copyright owner (Goldfarb 47). However, typically only one or more of these particular rights are authorized at a time, rarely, if ever, is the entire copyright ownership sold off. Instead a writer would authorize the rights to print his piece and distribute it to a publisher, or the right to translate and distribute in another country.

How do I avoid getting in trouble with copyright laws? There are three types of copyright violations: direct infringement, contributory infringement, and vicarious infringement. Direct is pretty straightforward; violating a copyright owner’s exclusive rights. For example, copying someone else’s work and distributing it. Contributory infringement is very similar; it occurs when you contribute somehow to someone else’s

direct infringement. Vicarious infringement occurs when you have a direct financial interest in an infringing activity that you are in control of. A fine for these infringements may range from \$200 to \$150,000 depending on the seriousness of the crime (Hoffman 21-22). Ignorance of the law is not taken into account in court, and neither is intent except for evaluating the extent of liability of the infringer. However, avoiding any of these three types of infringements would be pretty simple. Simply assume anything you find to be copyrighted, whether or not it is clearly labeled (Weinstein 243).

Of course, there is the possibility of being on the other side of the lawbreaking. It's necessary to be aware of precautions that should be taken to avoid being taken advantage of. Earlier I mentioned situations in which copyright ownership would be placed in different hands than the creator. In order to avoid these situations, several precautions can be taken. A lot of times, free lance writers get caught in uncomfortable legal positions because they can easily be jammed into the work-for-hire category or the employee categories in which his or her work would be under the copyright ownership of his or her "employer." Most of the time, freelance writers do not receive regular checks or any kinds of benefits, etc, but can legally still be considered to be employed by someone. In order to keep your work from being considered a work-for-hire or under the scope of a job you are not a part of, you can get a signed statement declaring it not to be either of these. However, since this is not always the easiest way to go, a slightly more realistic answer would be by getting a signed statement declaring you not under the particular company's employment.

So of course, when submitting ideas you must also make sure not to let anyone take advantage of you. The only way you can protect your raw ideas from companies and

individuals is through different types of contracts. There are standard contracts, implied contracts, and confidential relationships. A standard contract is pretty self explanatory and not typically broken. For example, a magazine has promised to pay you money in exchange for an idea for a story. An example of an implied contract is when a publication solicits for ideas. Although a direct contract does not exactly exist, one is implied.

Obviously, this can get a little sketchy, so the simplest way possible to avoid complications would be to include a statement in any proposal being submitted with your expectation of getting paid if they decide to use your idea. If information is exchanged on a more personal level, either a confidential relationship may be in place. This is basically if a writer deals frequently with a magazine or book publisher, or at least has in the past. However, again, this may get sketchy. To avoid complications, have the magazine or book publisher define your relationship as confidential through a written contract (Goldfarb 84-89).

Through the answering of these questions, we have finally come upon our conclusion. Perhaps now, the technicalities will not be so intimidating, the history can be understood more clearly, and the reader (and of course the writer) can be more careful to avoid encountering problems within this world of copyrights. I hope you have enjoyed this journey through the inner workings of a corporate body that definitely needs to be understood and respected if writing is to be taken seriously in the future. But of course, the reader must keep in mind that there are hulking textbooks that come out yearly on the progress of such laws, which keep those lawyer types updated with the recent decisions of the court systems, as well as any changes within interpretation of these ancient words.

So of course, as you read this the rules are changing. But no worries, these basics are here to stay.

Keith Potempa is a student at Columbia College Chicago. His copyrighted work has appeared in various magazines.

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