

Note: The information provided in this document is for information and guidance only and may not be considered as legal advice. If you have specific issues or areas that need clarification, you are encouraged to consult with a qualified attorney.

What is Copyright?

Under United States law, **copyright reserves for each of us, certain rights to the use of our original intellectual property works.** The laws are intended to prevent other people from illegally copying, reproducing or selling our work.

The Copyright Laws reserves to the owner the right to:

- **Copy, duplicate, transcribe or imitate** the work in fixed form.
- **Modify the work to create a new or 'derivative' work**, e.g.: a second edition of a novel, or a screenplay adapted from it.
- **Distribute copies of the work to the public** for sale, rental, lease or lending.
- **Public performance** of the work - e.g.: play, recite, act out, show in a public place or transmit to the public
- **Public display** - e.g.: show a copy of the work directly or by audiovisual means in a public place, or transmit it to the public.

Certain types of visual art works also have "moral rights", limiting the modification of the work and the use of the author's name without permission.

"What is copyrightable?"

Copyright Law can protect almost all the products of your original intellectual or creative activity. This includes: prose, poetry, essays, commentaries, plays, drawings, paintings, photographs, advertising layouts, graphic designs, cartoons, songs, jingles, choral works, orchestral works, documentary films, instructional videotapes, computer games, simulations; musical, dramatic, dance and other performances, as well as various combinations of these.

Perhaps it's a little easier to look at what **CANNOT** be copyrighted:

- Works not fixed in tangible form (more later!)
- Names, titles and short phrases. (In some cases these may be protected under Trademark Law.)
- Formulas, processes, systems and methods. (Some cases may qualify under Trade Secret Law.)
- Familiar symbols or designs, variations of typographic ornamentation, lettering or coloring.
- Works consisting entirely of information that is common property, with no original authorship (e.g. rulers, tape measures, tables derived from public documents).

You cannot copyright an idea!

Remember the point above about "works not fixed in tangible form"? This requirement is critical. You can have the greatest idea - work all the details out in your head and even and discuss and share it with others. **But until you "fix" the expression of that idea- you cannot claim copyright.**

Fixing the idea puts the results of your intellectual and creative processes into a tangible form which:

- documents your original ownership
- 'fixes' the idea so it can be handled, examined, demonstrated, used by others, and
- provides a tangible product to which copyright can be assigned.

What is "Fixed?" Once the intellectual property is transcribed, documented, or recorded in any medium that can be handled, seen, heard or manipulated by others, it is said to be fixed. The medium can be tangible (paper, film, videotape), or intangible (electronic signals, digital codes, binary data, etc.) that must be read by a machine or device.

"How long does copyright last?"

The **term** of copyright protection depends on three factors:

- Who created the work?
- When was it created?
- When it was the work first distributed commercially?

Recent amendments to copyright law including the Bono Amendment (yes, named after Sonny) extended the copyright ownership. There are provisions to 'grandfather' works copyrighted prior to January 1, 1978 but the basic guidelines are:

- For works created by and individual on or after January 1, 1978 the term extends *for the life of the author plus 70 years.*
- For works "made for hire" or pseudonymous works the term is *95 years from the first date of publication or 120 years from the date of creation, whichever is shorter.*

"What is 'Public Domain'?"

A work in the public domain is *not protected by copyright*- and maybe used without restriction. Such works include:

- Works in which the original term of copyright has expired, and has not been renewed.
- Works where the author expressly relinquished the right to protect the work.
- U.S. Government works.

Two cautions!!

- A work in the public domain may be quoted extensively, performed, photographed, posted on the WWW, etc., but *another author's version, interpretation, rendition of the work may be copyrighted.*
- Consider the following examples:
 - A Mozart piano concerto is in the public domain, but Mitsuko Uchida's performance and recording of that concerto are protected.
 - Vincent Van Gogh's painting "Starry Night" is in the public domain, but a slide image produced by the Van Gogh Museum in Amsterdam is protected. (So is the postal card rendition *licensed* by the museum.)
 - Shakespeare's "*A Midsummer Night's Dream*"? The script is in the public domain, but the 1998 film of the play is protected.

- Federal government works (with the exception of standard reference data produced by the Secretary of Commerce) are public domain. However- if the work may be the result of an independent contractor working for the government. In that case the work is protected- and the copyright may be assigned back to the government. Check with the government agency.

If you have any doubt about a works' current status, it pays to run a thorough check starting with your primary source for the work.

10/00DLM

