



# Copyright Services



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Tennessee law requires DeSalvo Law Firm PLLC to inform you that this is an advertisement. The Tennessee Commission on Continuing Legal Education and Specialization does not offer certification as a specialist in the area of copyright law.

# What is Copyright?

Copyright is a form of ownership of intangible personal property granted to authors of **original works of authorship**, including **published** and **unpublished** creative works. Copyright protects works from being used without the owner's permission. To be protected by copyright, a creative work must be both (1) **original** and (2) **fixed in a tangible medium of expression**. The fixation need not be directly perceptible as long as it may be communicated with the aid of a machine or device. A work is "**published when it is made available to the public for sale or distribution.**"

Copyright is the subject of federal law. The Copyright Act of 1976 (effective January 1, 1978), as amended, provides the substantive law regarding U.S. copyrights. A copyright and the physical embodiment of the work are different things. A copyright is a bundle of legal rights, and the purchase of a physical copy of the copyrighted work (e.g., a book) does not confer ownership of the underlying copyright. Under the **First Sale Doctrine**, generally a purchaser has the right to resell the copy, although the copyright owner maintains the exclusive right to distribute copies of the work. Except in cases of **works made for hire**, unless transferred by a signed, written instrument, the author is the copyright owner.

## Ideas Versus Expression of Ideas

Copyright does not protect an idea, only the original expression of an idea. For example, "boy meets girl, girl breaks boy's heart" is the unprotectable idea underlying countless books, films, and songs. Although no one can own the idea, each original book, film, and song based on the idea is protectable under copyright. Names, titles, slogans, individual words, and short phrases are usually not protectable under copyright. Such items might qualify as other protectable intellectual property (e.g., trademark) and/or be protectable under certain tort theories, such as misappropriation of goodwill.

## The Bundle of Rights

Copyright owners enjoy certain exclusive rights in copyrighted works, usually referred to as the "bundle of rights," including the right to do or authorize any of the following:

- reproduce the work in copies or phonorecords;
- prepare derivative works based upon the work;
- distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audio visual works, perform the work publicly;
- in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, display the work publicly; and
- in the case of sound recordings, perform the work publicly by means of a digital audio transmission.

A copyright owner may transfer ownership or exclusive rights in any or all of these rights to one or more other parties; however, the transfer will not be valid unless it is in writing and signed by the copyright owner or the owner's authorized agent.

# Works Protected by Copyright

Works subject to copyright protection include the following:

- 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



These categories are construed broadly and are non-exclusive, allowing for the creation of works in formats not yet known. For example, computer programs may be registered as “literary works;” architectural plans may be registered as “pictorial, graphic, and sculptural works;” and website content may be registered as “text, photography, motion picture/audiovisual, sound recordings” and/or other types of works, as applicable.

## Joint Works

**Joint works** are copyrights created by more than one author. The authors of a joint work (e.g., co-writers of a musical composition) are equal co-owners of the copyright in the work, unless they enter into a written agreement setting forth an alternate division of rights.

## Works Made For Hire

Section 101 of the Copyright Act of 1976 defines a **work made for hire** as:

- (1) a work prepared by an employee **within the scope of his or her employment**; or (2) a work **specially ordered or commissioned** for use as:
- a contribution to a collective work
  - a part of a motion picture or other audiovisual work
  - a translation
  - a supplementary work
  - a compilation
  - an instructional text
  - a test
  - answer material for a test
  - an atlas

if the parties expressly agree in a written, signed instrument that the work shall be considered a work made for hire.

In the case of a **work made for hire**, the employer, not the employee, is the legal author. A work for hire does not simply mean that a person pays another to create a work. To be a work for hire, it must meet the statutory definition above. Moreover, parties cannot contract to make something a work for hire if it does not meet the statutory requirements.

# Copyright Registration

Copyright protection subsists in an original expression of authorship from the moment it is **fixed in a tangible medium of expression**. Copyright becomes the property of the author immediately upon creation in a physical embodiment (e.g., a written manuscript; a phonorecord regardless of configuration; or a photograph).

Although registration is not mandatory for a work to be protected, a **certificate of registration** is a prerequisite to filing a copyright infringement lawsuit. Copyright registration also provides several benefits to the owner, including:

- registration establishes a public record of the copyright claim;
- if copyright registration is made **within five years of publication**, registration will establish **prima facie evidence** in court of the validity of the copyright and of the facts stated in the registration certificate;
- if registration is made **within three months of initial publication** or prior to an infringement of the work for unpublished works, **statutory damages and attorney's fees** may be available to the owner as remedies in an infringement action (otherwise, the owner is limited to seeking the owner's actual damages and the infringer's profits);
- Registration limits the likelihood an infringer successfully may assert an "innocent infringement" defense; and
- the copyright owner may record the registration with the U.S. Customs Service for protection against the importation of infringing copies.

An application for copyright registration includes three essential elements: a **completed application form** (usually using the Copyright Office's **eCO electronic filing system**), a nonrefundable **filing fee**, and a non-returnable **deposit** (i.e., a copy or copies of the work being registered and "deposited" with the Copyright Office). A copyright registration evidences ownership of intangible personal property, not the physical copy of the work.

## Copyright Notice



Immediately upon claiming rights in a particular work, it is permissible to attach a **copyright notice** to visibly perceptible copies of the work. For visibly perceptible works other than phonorecords containing sound recordings, the proper notice is the word "copyright," or the "circle c" symbol (i.e., ©). The owner of a **sound recording** may attach a "circle p" copyright notice (i.e., ®) to phonorecords (regardless of configuration) containing the sound recording.

Notice also should contain the year in which the work was first published and the name of the owner of the copyright. Although not required under the law, it is advisable to include the phrase, "all rights reserved," if the owner retained all of the individual rights in the work, as discussed above ("Bundle of Rights"). An example of a complete notice is "© 2016 DeSalvo Law Firm PLLC. All rights reserved." Our attorneys can provide guidance on the proper form and location of copyright notices.

# Length of Copyright Protection

## **Works Created on or After January 1, 1978:**

Works created (i.e., fixed in tangible medium of expression for the first time) on or after January 1, 1978, are automatically protected from the moment of creation and ordinarily enjoy protection for the **author's life plus 70 years**. If there are two or more authors, the term lasts for **70 years after the life of the last surviving author**. For works made for hire, and for **anonymous and pseudonymous works** (unless the author's identity is revealed in Copyright Office records), copyright duration is **95 years from first publication or 120 years from creation, whichever expires first**.

## **Works Originally Created but not Published or Registered Before January 1, 1978:**

These unpublished, common law works have been given federal copyright protection automatically. The duration of copyright in these works generally is computed in the same way as works created on or after January 1, 1978, (i.e., the life-plus-70 or 95/120-year terms discussed above). In no case will the term of copyright for works in this category expire before December 31, 2002, and for works published on or before December 31, 2002, the term of copyright will not expire before December 31, 2047.

## **Works Originally Created and Published or Registered Before January 1, 1978:**

Under the 1909 Copyright Act, copyright was secured either on the date a work was published with a copyright notice or on the date of registration if the work was registered in unpublished form. In either case, the copyright endured for a first term of 28 years from the date it was secured. During the last year of the first term, the copyright was eligible for renewal. The Copyright Act of 1976 extended the renewal term from 28 to 47 years for copyrights that were subsisting on January 1, 1978, or for pre-1978 copyrights restored under the Uruguay Round Agreements Act (URAA), making these works eligible for a total term of protection of 75 years.

The **Sonny Bono Copyright Term Extension Act**, enacted on October 27, 1998, further extended the renewal term of copyrights subsisting on that date by 20 years, providing for a total term of 95 years from the date of first U.S. publication if the work was published before January 1, 1978. For all works created or first published after January 1, 1978, the term of protection was extended by 20 years from the previous term of protection of the lifetime of the author(s) plus 50 years to the lifetime of the author(s) plus 70 years.

Public Law 102-307, enacted on June 26, 1992, amended the 1976 Copyright Act to provide for automatic renewal of the term of copyrights secured between January 1, 1964 and December 31, 1977. Although the renewal term is provided automatically, the Copyright Office does not issue a renewal certificate for these works unless a renewal application and fee are received and registered in the Copyright Office. Public Renewal registration for this category of works is optional; however, some benefits accrue for the optional renewal registrations made between the 27th and 28th years of the first term.

## **Unpublished Works:**

All works that are unpublished, regardless of the nationality of the author, are protected in the United States. Works that are first published in the United States or in a country with which the United States has a copyright treaty or that are created by a citizen or domiciliary of a country with which the United States has a copyright treaty also are protected.

# Termination of Copyright Transfers

Under certain conditions, an author or certain statutory beneficiaries may terminate a transfer of copyright even where the written transfer expressly states that the transfer is irrevocable. The transfer may be terminated upon written notice to the transferee within specified time limits following regulatory requirements and timely recording of the notice with the U.S. Copyright Office. A telephone call or letter to the transferee is ineffectual. Termination allows the author (or the author's heirs) to enjoy the benefits of a copyrighted work once the marketplace determines the full value of it. Transfers of works created both before and after January 1, 1978, the effective date of the 1976 Copyright Act, may be terminated; however, strict compliance with the time limits is required. Post-1977 works may be terminated after 35 years (for published works) while pre-1978 works may be recaptured for a period up to 39 years of the remaining term.

## Copyright Services

DeSalvo Law Firm PLLC offers a variety of Copyright services, including the following:

- Copyright Registration
- Works for Hire Agreements
- Termination of Copyright Transfers
- Copyright Enforcement
- Infringement Litigation
- Take-Down Notices
- Document Recordation
- Copyright Licensing, Sales/Purchases, and Transfers
- Chain of Title Searches/Remediation
- Royalty Audits
- Expert Witness Testimony
- Copyright Trusts

Unless included in the following flat rates section, copyright services are charged at our standard hourly rates plus expenses. Hourly rates vary year to year, based on the years of experience of the assigned attorneys and complexity of the issues.

## Copyright Flat Rates Effective January 1, 2016

DeSalvo Law Firm PLLC offers the following copyright services at the flat rates indicated:

### U.S. Copyright Registration for a Single Work

Includes:

- Electronic copyright application\*
- Attorney fees for application preparation and filing\*\*

**\$350 attorney fees**

+

**Copyright Office application fee**

**(currently \$35 per registration if single author, same claimant, one work, & not a work for hire;  
otherwise \$55 per registration)**

\*Additional fees apply if paper application required.

\*\*Standard hourly rates apply to all actions taken after the application is filed.

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# Copyright Flat Rates (cont.)

Effective January 1, 2016

## U.S. Copyright Registration for Collection of 10 or Fewer Works

**Includes:**

- Electronic copyright application\*
- Attorneys' fees for application preparation and filing\*\*

**\$450 attorney fees**

+

**Copyright Office application fee**  
(currently \$55 per registration)

## U.S. Copyright Registration for Collections of 11-25 Works

**Includes:**

- Electronic copyright application\*
- Attorneys' fees for application preparation and filing\*\*

**\$500 attorney fees**

+

**Copyright Office application fee**  
(currently \$55 per registration)

## U.S. Copyright Registration for Collections of more than 25 Works

**Includes:**

- Electronic copyright application\*
- Attorneys' fees for application preparation and filing\*\*

**\$500 attorney fees for first 25 works**

+

**\$5 for each additional work**

+

**Copyright Office application fee**  
(currently \$55 per registration)

\*Additional fees apply if paper application required.

\*\*Standard hourly rates apply to all actions taken after the application is filed.

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