An overview of U.S. copyright law and licensing solutions

Most, if not all of the published content you use and share is protected by copyright law. As a result, if you use or distribute that content without the copyright holder’s permission, you may violate that copyright holder’s rights, and put yourself and your organization at risk of legal and financial liability.

This copyright primer* from Copyright Clearance Center provides an overview of U.S. copyright law and licensing solutions.

Purpose and origin of U.S. copyright law
As stated in the U.S. Constitution, the purpose of copyright is “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.” – U.S. Constitution, Article I, Section 8

What is copyright?
In the United States, copyright is a form of protection provided by the government to the authors of “original works of authorship, including literary, dramatic, musical, artistic and certain other intellectual works.” This protection is available to both published and unpublished works, regardless of the nationality or domicile of the author. Under current U.S. copyright law, copyright protection is automatic and exists from the time the work is fixed in a tangible means of expression — written down or recorded — for the first time. Registration and notice, though recommended, are not required for protection. The copyright immediately becomes the property of the author who created the work. In the case of works made within the scope of employment and certain other “works made for hire”, the employer is considered the author. Only the author, or those who obtain rights through the author (such as a publisher to which the author has assigned his or her rights), can rightfully claim copyright. Generally, copyrighted works are protected under U.S. law from the time they are created until 70 years after the author’s death.

Exclusive rights
U.S. copyright law provides the copyright holder with the following exclusive rights under the law: the right to reproduce the work, to distribute copies, to create derivative works, to publicly display the work and to publicly perform the work. It is generally unlawful for anyone to exercise any of these exclusive rights without the permission of the copyright holder.

Not protected by copyright
Not all original works are protected by copyright. Among those excluded: titles, names, slogans; ideas, facts and data; listings of ingredients or contents; natural or self-evident facts; and public domain works. Some of these may, however, be protected under other areas of intellectual property law.

Public domain
The legal concept of the public domain as it applies to copyright law should not be confused with the fact that a work may be publicly available, such as information found on the Internet. The public domain comprises all those works that are either no longer protected by copyright or never were. These fall into three major categories: (1) facts, data and other subject matter that is not protected under copyright law, (2) U.S. federal government works, and (3) works for which copyright States prior to 1923 are considered to be in the public domain in the United States. Materials created since 1989, other than U.S. federal government works, are presumptively protected by copyright, and complex rules
exist to determine the copyright status of works created from 1923 through 1988. As this demonstrates, the likelihood is low that materials of greatest interest to most business professionals are in the public domain.

**Fair use**

Fair use is not an exception to copyright law. Rather it is a defense that may be raised by the defendant in an infringement case. Fair use recognizes that certain types of use of other people’s copyright-protected works do not require the copyright holder’s authorization. Section 107 of the U.S. Copyright Act lists four factors to help judges determine, and therefore to help you predict, when content use may be considered fair use: (1) the nature and purpose of the use, (2) the nature of the work used, (3) the amount and substantiality of the portion used and (4) the effect on the market or potential market for the work used. Courts weigh each of these factors, and then weigh the factors against each other, on a case-by-case basis in light of the case’s specific facts to determine whether the fair use defense may apply with respect to an alleged infringing use. The analysis is very complex, and it is often very difficult even for copyright experts to predict the outcome of cases involving fair use. When in doubt, obtain permission.

**Copyright infringement**

In exercising any of the exclusive rights provided to the copyright holder without his or her permission, you may be violating or infringing on his or her rights under U.S. copyright law. If the copyright holder of a work registered with the U.S. Copyright Office files a successful infringement litigation in civil court, that copyright holder may be entitled to compensation. Compensation may include actual damages, such as lost profits from the infringing activity, or statutory damages ranging from $750 to $30,000 for each protection that has lapsed. Essentially all works first published in the United States are copyrightable even if the court feels that the infringement was committed “willfully.” In cases of large-scale criminal infringement, litigation can be filed whether or not the copyrighted work is registered with the U.S. Copyright Office.

**Notable infringement case**

Infringement can be a costly proposition. In the Lowry’s Reports v. Legg Mason case, a jury awarded $19.7 million in damages to Lowry’s for willful copyright infringement by Legg Mason. Legg Mason, a financial advisory and investment firm, had purchased a single subscription to “Lowry’s New York Stock Exchange Market Trend Analysis” newsletter. Over the course of several years, Legg Mason personnel regularly copied and disseminated copies of the newsletter to all its brokers, and later regularly posted the electronic version of the newsletter on its corporate intranet. Legg Mason continued these practices even after it was warned by Lowry’s to cease. Legg Mason appealed the jury decision and the case ultimately settled for an estimated $11-$12 million.

**International copyright law**

There is no such thing as an “international copyright” that automatically protects a work throughout the world, although more than 160 countries, including the United States, have ratified the Berne Convention, a treaty intended to accomplish many of the benefits of an “international copyright law.” Although the Berne Convention seeks to ensure some level of uniformity from country to country, the laws in each country govern the use of works within that country. For example, works used within the United States, even if they are created by foreign authors, are used under U.S. law.

**Permission**

In general, when using the work of others you must first determine if copyright permission is required. If the work is covered under copyright law and is not in the public domain, and the proposed use does not meet the criteria for fair use, you will likely need to obtain permission from the copyright holder or its agent in order to re-use the work. Examples of
uses that may require permission include: photocopying a newspaper article; emailing a journal article; posting content on an Internet or intranet site; burning slides to a CD; inserting images into a presentation; distributing a PDF; and reusing content from wikis and blogs.

* The author of this primer is not a lawyer or law firm. This primer is not intended to provide legal advice and it does not serve as a substitute for obtaining the advice of legal counsel.

Permission sources
The following are some sources where you can obtain permission to use various types of copyrighted materials:

- Copyright Clearance Center – Reproducing and sharing published text content; image licenses
- Motion Picture Licensing Corporation – Performance of motion pictures
- Broadcast Music, Inc. (BMI) and the American Society of Composers, Authors and Publishers (ASCAP) – Performance of music at corporate events

Learn more
CCC, the global leader in rights licensing solutions, hosts copyright workshops throughout the year to help business professionals better understand their rights and responsibilities.

To see the schedule of upcoming workshops, visit www.copyright.com/events.