



THE VIRTUAL COPYRIGHT CONSULTATION

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1. What is a Copyright?

In general, Copyright law protects works of original artistic expression that are fixed in a tangible form. It is a theory of law that dates back hundreds of years and in the U.S. is codified under title 17 of the US Code. It extends certain protections to the authors of "original works of authorship"(often times referred to as a "Work"), which include musical, literary, artistic, dramatic and a certain other intellectual rights (such as software code, vessel hull designs, and architectural plans).

2. What are the rights included in a copyright?

The rights extended to copyright owners under the Copyright act are the following:

1. To reproduce the Work in copy for or phonorecords (including tape, CD, electronic medium etc.)
2. To create derivative works based on the copyrighted work
3. To distribute copies of the work



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4. To perform the copyrighted work publicly (applies to literary, musical, motion pictures and other audio visual works, and other performance arts)
5. In the case of sound recordings only - to perform the work publicly by means of a digital audio transmission.

When someone violates the above mentioned rights, it is called infringement (for more on infringement [click here](#)). However, the above rights are not always absolute - the law has carved out a few exceptions. One of the most notable exceptions is called the "fair use exception". [Click here](#) for a more detailed overview of the fair use exception). Additionally certain rights are subject to a compulsory license, which will allow another party to use the work as long as they pay the statutory required royalty and comply with certain other statutory obligations. This is seen most often concerning music.

3. What is not protected by copyright?

So basically now that we have defined what copyright law in the United States protects, lets take a quick look at what is doesn't protect. Here are some examples:

1. Copyright does not protect a concept or an idea - it can protect an individuals' expression of a concept or idea, but is does not protect the idea itself.
2. Copyright does not protect titles, names, short phrases or slogans, familiar symbols or designs (most of these may be protectable under trademark law - [click here](#) to see our discussion of trademarks.)
3. Functional aspects of items
4. Clothing designs
5. Works in the public domain
6. Fonts or type faces

4. I have seen the term "Derivative Work". What does that mean?

One of the rights of a copyrights holder is the right to produce derivative works. This may not seem like a big deal if you don't know what a derivative work is - but trust us it is! A derivative work is a work that is based on or some how incorporates an existing work. One of the easiest examples of a derivative work is a screenplay or motion picture based on a book. Other examples include new musical arrangements of previous works, multimedia versions of written materials and so on. If the original work is still protected by copyright, then only the copyright owner (or those under authorization or a license from the copyright

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holder) may prepare derivative works. Failure to obtain such permission violates the rights of the copyright holder and could subject you liability for an unauthorized derivative work. If on the other hand, the work is in the public domain, an author of a derivative work can have rights to the extent that the derivative work contains new original additions to the pre-existing work. The law on derivative works and what specific level of originality is required for rights in a derivative work to accrue is very fact specific and often confusing area of the law. Court cases are replete with examples of even the same courts issuing seeming contrary decisions. An attorney should always be consulted when issues of derivative works arise.

5. What does "in the public domain" mean?

Copyrighted works are not entitled to perpetual protection. They do have a term for which the protection lasts and then they enter the Public Domain. The length of time a work is protected depends on when the work was created. The current term is life of the author plus seventy years or ninety five years from date of publication or one hundred twenty years from the date of creation, whichever is shorter for works for hire. If the work was created before 1978, a more complex analysis needs to be done to determine the work's term. Additionally, works may enter the public domain if the author overtly or through their actions deliberately places the work in the public domain. Examples of public domain works include Shakespearean plays, and music that has been around for a few hundred years such as Mozart, Brahms, Chopin and early American folk music.

6. I have heard that anything on the internet is in the public domain. Is this true?

ABSOLUTELY NOT! While some things that appear on the internet may be in the public domain, the simple act of making something available on the internet does not place it in the public domain. This goes for music, pictures, text and even those really annoying chain letters that get forwarded all over the place. Therefore, unless you have permission from the copyright holder, it is illegal for you to download a picture from one website and use it on your own or to incorporate or republish those works. The same would be true for other art work, music and even text.

7. Is there anything beneficial to mailing myself a copy of my work and keeping it unopened (i.e. the "Poor Man's Copyright")?

The "poor man's copyright" as it is sometimes referred to is not of much benefit. As previously stated on this website, common law copyrights attach to a work when it is created. Sending yourself a copy of the

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work may help in proving what date the work is actually created, but the action itself does not create any rights or confer any other benefit to you.

8. Do I have to include the © symbol in order for my copyright to be valid?

If the work was created after 1989, the use of the © symbol is not required. For works prior to 1989 the © is required to be used on the work in order for the copyrights to be enforceable.

9. How long does my copyright last?

For works created after 1978 the term of the copyright is life of the author plus 70 years or 95 years for works for hire. If the work was created before 1978 a more detailed analysis will need to be performed to determine its duration.

10. Can I copyright my bumper sticker?

It depends, if the bumper sticker features graphics or artwork, then the artwork may be copyrighted. If the bumper sticker contains only words, then it would not be copyrightable, but could potentially be trademarkable.

11. Can I copyright my band name?

Band names or names that a musician or actor performs under cannot be copyrighted, but may be trademarkable.

12. If I take a picture of someone else, who owns the rights to the picture?

The doctrine of the right of publicity is often intertwined with copyright issues. Under copyright law the photographer owns the rights to the photograph even if the photograph features individuals in it. Since the photographer owns the copyright, then presumably they can do anything with the photograph they want. However, this is not necessarily the case. Courts have often recognized a right of privacy, prohibiting the appropriation of a persons name, image or likeness for commercial benefit without their authorization. Remedies include the ability to get an injunction and monetary damages for the invasion into the person's privacy and the right not to have their image splattered across the globe.

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The right of publicity is a somewhat related topic to the privacy right described above. It applies to celebrities, public officials and any other person in the public eye. Since these individuals voluntarily place themselves into the public eye, they are kind of hard pressed to claim an invasion of their privacy. Instead the doctrine of the right of publicity protects the public figures right to cash in on their fame - it protects commercial rights instead of privacy rights. Additionally, the doctrine is based purely on state laws and the law from state to state varies greatly with some states, such as California recognize very strong protection of the right of publicity while, some states such as Colorado refuse to recognize the right at all. All in all it can be a complex analysis.

If you are taking photographs where individuals will be recognizable in the pictures or video then it is advisable that you get a modeling release from every individual who is recognizable in the photograph or film. Competent legal advice is always recommended before embarking down this road.

13. Why can't I copy or rip some newer cd's?

Basically the reason is because the music company has protected the disk with Digital Rights Management that prevents copying or ripping of the music. In 1998 the Digital millennium Copyright Act (DMCA) was signed into law by Bill Clinton. Certain Provisions of the DMCA strengthened music companies ability to stop illegal copying of digital music through the use of DRM. The main thrust of the DMCA in this regard was to make it illegal to circumvent DRM technology. This prohibition is mainly aimed at DVD's, CD's, software, MP3's, and video games. The act provides harsh penalties (willful violation of the DMCA can be a felony) for those who attempt to circumvent any such rights management devices. The most notable case involving prosecution under the DMCA involves the creation and distribution of software that enables users to avoid copy protection on commercial DVD's. The act has exemptions where circumvention is allowed, including circumvention for the purpose of attaining program-to-program interoperability and research for encryption and digital security systems. There has been a great deal of controversy surrounding the passing and implementation of the DMCA. The anti-circumvention provisions of the act were passed in 1998 in response to the US's treaty obligations under the WIPO. However, opponents of the act believe the act goes beyond the US's treaty obligations. They argue the act undermines the viability of the fair use, the act stifles innovation, competition, and research, and the act does not help achieve its goal of stopping internet piracy. These concerns have led scholars and practitioners to seek revision of the DMCA.

14. How much music can I sample without needing a license?

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If the other circuits follow a recent case issued by the sixth circuit in 2004- the answer is none. Basically that case draws a line in the sand that says if you digitally sample one note from another song - you need to get a license. For more on this topic please refer to our blog post at <http://lld-law.com/2005/12/three-chords-and-truth.html>

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