



What is copyright and how does it work?



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Copyright is one of those concepts that's frequently mentioned – but also frequently misunderstood. That's why, in this article, we go back to first principles to cover the basics of copyright. What is copyright, how is copyright earned, and who holds the copyright? We'll also take a quick look at what qualifies as copyright infringement.

What exactly is copyright?

Copyright is a concept within the wider remit of intellectual property law, sitting alongside legal concepts such as trademarks, patents, and so forth.

While all these concepts are similar in their purpose of protecting intellectual property rights, copyright has a specific meaning. Copyright grants a set of transferrable rights to the creator of a work. The party that owns the copyright to a work enjoys exclusive rights over how the work can be used, and grants those rights over a specific period of time – extending beyond the life of the author.

These rights include the right to show or perform the work in public, to make copies of the work – and to issue those copies to the public. The copyright holder can also edit the work as they see fit (or create derivative works) and license the copyright – or indeed sell the copyright altogether.

Today, copyright is generally governed by national legislation – which, though similar in intent, has varying practical implications from country to country. In turn, in most countries, international copyright is governed by the Berne Convention, an agreement adopted by many nations at an international convention in 1881. It provides for harmonized, worldwide copyright protection. The United States, interestingly, was one of the last industrial nations to sign the Berne convention in 1988.

How is copyright assigned – and how long does it last?

Copyright is assigned automatically. You can safely assume that any original work that was published recently is protected by copyright law. Everything from a short blog on a website through to an entire book is covered by copyright automatically just by virtue of being published.

However copyright also applies to a work that was committed to or stored on some or the other medium – even if it was never “published”. In other words, unlike a trademark or a patent, for example, an author does not need to register a work in order to enjoy protection under copyright law.

Some countries, including the United States, have a copyright registration process through which the author can put in place a verifiable record of the copyrighted content, including the date of creation. Though not essential to enjoy some copyright protection, authors do need to register copyright claims for certain purposes. For example, in the U.S., registering a claim with the Copyright Office is a prerequisite to filing a case for copyright infringement.

The expiry of copyright is a slightly complicated subject. In the U.S., for works that were created after 1978, copyright is valid for as long as the author is alive plus another 70 years. Older works are under a different set of rules and works created before 1927 are in the public domain – which means copyright no longer applies.

Who holds the copyright to a work?

In most cases, copyright is assigned to the person who originally produced the work, so who most of us would think of as the author of the work. There is an exception, however, where an author was “hired” to create a work. In the case of “works made for hire” the copyright holder would be the party that hired the author.

That includes the employment setting, so where work is created on behalf of an employer by an employee, copyright is held by the employer. Note also that copyright can also be assigned or transferred by the original copyright owner, just like any other property. This may include all of an owner’s rights – or indeed only some of the rights.

What can be copyrighted?

Needless to say, there are limits to what is protected by copyright law; broadly speaking there are a couple of basic conditions that must be met before a work is protected by copyright:

- The work must be original and though “original” is open to interpretation, some works would clearly *not* be original – for example, an alphabetical list of cities in the USA.
- A work must also be fixed, in other words it must be expressed somewhere – whether it’s in print, on the web, or stored on some medium.
- It must be a work of authorship – in other words, someone must have created the work, but authorship is a broad concept that also includes, for example, the recording of the performance of a work that is in the public domain.

What’s protected by copyright, in practice, isn’t always completely clear-cut. Nonetheless, there are common-sense cases where copyright is clearly in place, and if there is even a slight touch of originality to a work it is most likely protected by copyright. That includes the obvious – for example, a complete original novel is copyrighted, and so is a short story or a news article.

On the flipside, things that cannot be copyrighted include commonly known information, short phrases, or names and titles. Ideas and concepts, processes, or methods can’t be copyrighted – but their expression in a printed, tangible form might be subject to copyright protection.

To a degree, copyright law hasn’t kept up with the digital revolution and arguably courts are being stretched to interpret copyright law within a contemporary creative environment.

Copyright infringement – and obtaining rights

What counts as copyright infringement? Well, some common-sense cases include photocopying a novel and selling copies, as you’re clearly infringing on the copyright of the author. It’s also readily apparent that copying large chunks of a blog article and republishing it as your own work isn’t acceptable.

But what about a short quote, or an image thumbnail? Some elements of re-use are governed by *fair use*, which would allow, for example, a news outlet to refer to a copyrighted work in its daily business of reporting the news. However, fair use rights are nuanced – and situations considered by some to be fair use may well not hold up in court proceedings.

There are nonetheless reasonable guidelines to fair use, and in some cases, the agreement you made when you purchased information services may give you additional rights in a commercial setting. You may, for example, be able to re-use copyrighted content internally in your organization – but you’ll likely be barred from using that content in an external setting. Furthermore, your rights to re-use

copyrighted content internally may be barred by “user agreements” accepted from the outset when you purchased access to that content.

The penalties for infringing on copyright are not automatic. If you violate copyright, nothing may happen right away – but at some point, the copyright owner might become aware of your actions and decide to enforce the protection they enjoy under copyright through civil courts, leading potentially to the award of significant damages against you.

Staying mindful of copyright in your everyday work

Most of us have a reasonable sense of what’s sensible to do and what’s not when it comes to handling another author’s content. But there are also practical realities to consider, as teams often depend on published work in their everyday work – including in internal and external communications.

Playing loose with copyright protection can really land you in trouble, but to be fair it’s a complex field. Education is critical – from junior employees right to the top. However, correct licensing also has a role to play, and we’d encourage you to request our article on use and re-use.

Interested in what Couranto can offer your business?
Contact [Nick Collison](#) for more information.

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