



# *I Can Copyright That?* Everyday Works to Consider

When people think of copyrights they often think about books, songs, and movies – but you don't have to be an author, musician, or filmmaker to be concerned with copyrights. There are many items, particularly those created in the course of business, that can also be protected:



Advertising and marketing materials



Blog articles, website copy, and other forms of content marketing



Catalogs



Databases and spreadsheets



Educational worksheets, workbooks, and tests



How-to guides, user manuals, and instructions



Interviews



Podcasts and Radio Broadcasts



Websites



Product Packaging



Blueprints, drawings, and photos



Slide Presentations

# PUBLIC DOMAIN: WHAT DOES IT REALLY MEAN?



*On January 1, 2022, a version of the beloved character "Winnie the Pooh" entered the public domain. January 1st is also known annually in the United States as Public Domain Day. But what exactly is the "public domain"?*

## Using Public Domain Works



Public domain works can be used without permission because there is no "owner" or property rights. However, a derivative work can be created from the original, and this could be copyrighted.

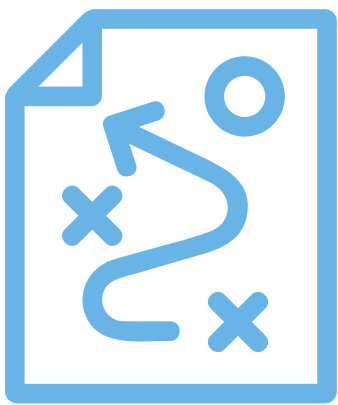
## Limitations of Using Public Domain

There may be scenarios in which works in the public domain have copyright protection. For example, a book of images in the public domain may still be copyrighted as a "collective work."

William Shakespeare's *The Taming of the Shrew* is in the public domain, but the film "Ten Things I Hate About You," an adaptation of the Shakespeare tale, has an active copyright.



## Can a Creator Bypass Public Domain?



Copyrights after 1978 are not subject to renewal so they generally cannot bypass the public domain.

However, there are ways to obtain ownership protections, including **trademarking** certain aspects of works, such as **characters**, or **creating and copyrighting a derivative work** that gives the creator some future control.

## How to Determine Fair Use

Fair use is a "legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances" through four factors:

- 1) The nature of the work used
- 2) The amount and substantiality of the work used
- 3) The effect of the use on its potential market
- 4) The value of the work used



# CREATIVE WORKS & THE WORLD OF COPYRIGHTS

BY PROFESSOR GARY GRAVES



## Copyrights & The Law

Copyrights are the most commonly used intellectual property protection tool in business. It is a provision in Title 17 of the U.S. Code that protects creative products. More specifically, the government states that it grants automatic protection to printed works, software, artwork, photos, video, and virtually everything on the internet once it is “fixed in any tangible medium of expression.”

## Freelancers, Joint Authorship, and Work For Hire



One common issue arises when an employee or freelance artist creates something for his employer or client. Who owns the work? The short answer: it depends. Generally, an employee’s work belongs to the employer, so long as the work was created within the scope of employment.



## Registering a Claim

On a personal note, I’d like to share with you my copyright experience. In 2020, I wrote and published a children’s book called “Chippy the Cheetah rides 545 miles from San Francisco to Los Angeles” It is a cute story about three things I love, Cycling, The AIDS Lifecycle, and Cheetahs. The entire copyright process took less than 10 minutes. I pointed my browser to the [www.copyright.gov](http://www.copyright.gov) portal and set up my account. From the HOME page, I clicked on “Literary Works,” then “Register A Literary Work.” From the left side of my screen, I clicked on “Register A New Claim,” then I clicked “Start Registration.” I had to provide the ISBN number, title of my book, and some personal information. I could have registered this work before it was published too. The second step was to pay the U.S. Copyright Office. Since this was an online registration it was \$45. The last step was to upload a PDF copy of my book. That was it.

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# IS IT FAIR USE OR INFRINGEMENT

Say you want to use someone else's copyrighted photograph in your blog or Instagram post. Is that "Fair Use" or copyright infringement?

## CAN YOU USE COPYRIGHTED MATERIAL?

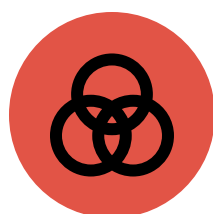
The Fair Use provisions of the Copyright Act allow you to use copyrighted material for specific purposes that serve the public interest as determined by four factors:



The purpose of the use is for nonprofit educational purposes.



The nature of the copyrighted work.



The amount and substantiality of the portion used



The effect of the use upon the market for the copyrighted work

## SIMILARLY, EDUCATIONAL INSTITUTIONS CAN USE COPYRIGHTED WORK IN A CLASS, SO LONG AS THE COPYING IS LIMITED TO:



A chapter from a book



An article from a periodical or newspaper

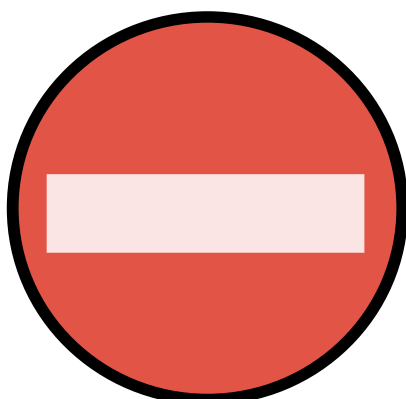


A short story, short essay or short poem



A chart, graph, diagram, drawing, or picture from a book, periodical, or newspaper

## WHAT ARE THE LIMITS TO FAIR USE?



There are limits to how much of a work can be copied for educational purposes. You also can't use these photocopies as a substitute for required texts. In addition, you can't charge for the photocopied work, and use of the copies by students cannot be mandatory.

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## WHAT'S IN A COPYRIGHT?

Copyrights last 70 years plus the term life of the author. Title 17 of the United States Code Section 102 lists eight broad categories of original works that are eligible for copyright. These are:

### LITERARY WORKS



### MUSICAL WORKS



### DRAMATIC WORKS



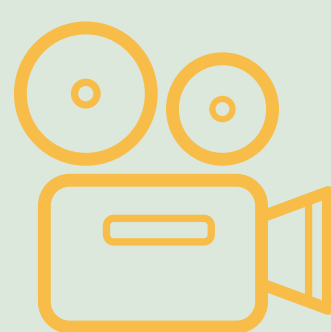
### PANTOMIMES & CHOREOGRAPHY



### GRAPHIC AND SCULPTURAL WORK



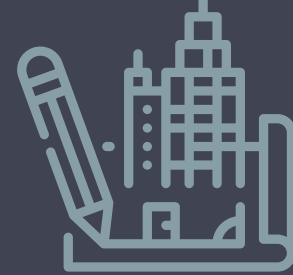
### MOTION PICTURES



### SOUND RECORDINGS



### ARCHITECTURAL WORK



## A COPYRIGHTABLE WORK MUST ALSO BE:

- Original
- Expressed or fixed on a tangible medium that can be seen or copied
- Authored or creatively compiled
- Not a fact or abstract idea

## WHAT RIGHTS ARE GRANTED?

The law grants you six exclusive rights once you copyright your work:

**PUBLISH OR  
REPRODUCE  
THE  
COPYRIGHTED  
WORK**

**PREPARE  
DERIVATIVE  
WORKS**

**DISTRIBUTE  
COPIES OR  
RECORDINGS  
OF THE WORK**

**PERFORM THE  
COPYRIGHTED  
WORK  
PUBLICLY**

**DISPLAY THE  
COPYRIGHTED  
WORK  
PUBLICLY**

**PERFORM THE  
WORK  
THROUGH A  
DIGITAL AUDIO  
TRANSMISSION**

# 5 THINGS EVERY ENTREPRENEUR SHOULD KNOW ABOUT COPYRIGHTS

Every entrepreneur should know how to protect and grow their business by leveraging copyright.

## 1. COPYRIGHTS PROTECT THE EXPRESSION OF IDEAS.

Copyrights are a form of intellectual property. They protect things like **books, music, photographs, and software**. It's important to note that copyrights protect your particular expression of an idea.



## 2. COPYRIGHTS ARE BENEFICIAL TO ENTREPRENEURS.

Copyright protection extends beyond creative works into **business documents, presentations, marketing materials, and even computer code**. This means many items created in the daily course of business can potentially be copyright-protected.



## 3. OFFICIALLY REGISTERING YOUR COPYRIGHT PROVIDES ADDITIONAL PROTECTION.

Registration enables you to file an infringement suit against anyone who misuses your work, and you'll be eligible for **statutory damages**, as well as other costs associated with the infringement.



## 4. COPYRIGHTS DON'T COVER EVERYTHING.

U.S. Copyright laws do **not** protect: Facts, ideas, systems, or methods, domain names, works of the U.S. Government, against unauthorized use in a foreign country, and works that fall within the public domain.



## 5. HOW TO AVOID COPYRIGHT INFRINGEMENT ACCUSATIONS.

Not only can you use copyright laws to **increase business assets (and revenue)**, it's also necessary to stay abreast of laws to protect your company from lawsuits.



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# Who Owns the Copyright to Published Works?

## General concepts

The issue of who owns the copyright to a published work can be complex, with no straightforward answers. When you open a book or look at a magazine, you're looking at the result of many different ownership structures and publishing contracts. These include exclusive ownership by the author, exclusive ownership by the publisher, to various mixed situations.

## U.S. Law: Who owns the copyright?

In the United States, the Copyright Act (Title 17 US Code) states that intellectual property belongs to the author, unless otherwise specified in a publishing contract. There are, however, various ways in which this default situation can change.

## Industry practices

A more common method that publishers use to acquire copyrights over published material is by outlining in their publishing agreement an exchange for a lump sum and/or a percentage of the sales. Alternatively, an author might just license the work to the publisher.

## Duration of copyright protection

Copyright ownership between the author(s) and the publisher also impacts the duration of the copyright, depending on whether the right originated from a person or from a business or legal entity. For works created after January 1st, 1978, the Copyright Act states that the duration is for the life of the author plus 70 years.

## The Curious case of “copyright orphans”

With the 1978 reform of the Copyright Act, parties no longer need to publish the work to obtain the copyright. "Copyright orphans", or situations in which the copyright has not expired but it is very difficult or impossible to find out who owns it, makes it so one either has to renounce it all together or to go on with the risk of being subject to legal actions from the legitimate owners.



# WHAT IF SOMEONE INFRINGES YOUR COPYRIGHT?

## WHAT IS COPYRIGHT INFRINGEMENT?

Infringement occurs when a person copies, distributes, performs, or displays all or part of a copyrighted work.



## WHAT CAN YOU DO?

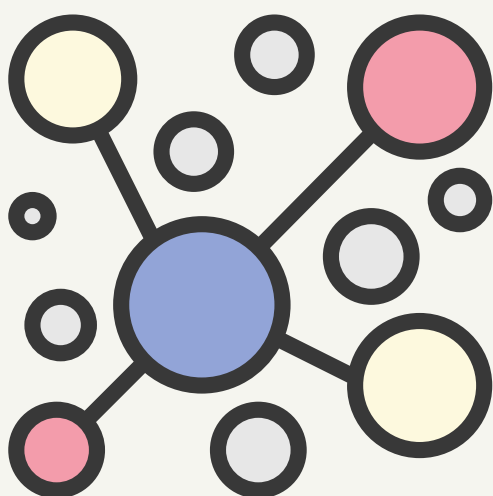
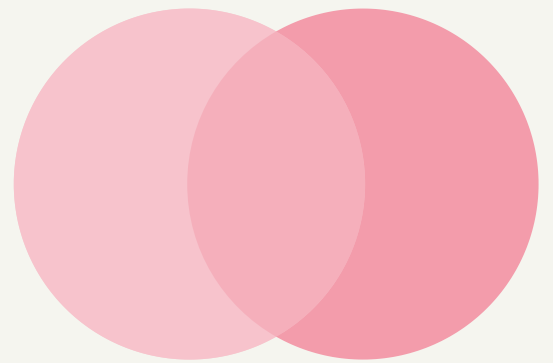
If you can prove infringement – either by getting the infringer to admit guilt, or by showing that he had access to your work and that his work is substantially similar – then you can recover monetary damages

### DID YOU KNOW?

In 2011, Kanye West was sued for sampling Sly Johnson's song "Different Strokes" to create his new song "The Joy" on Kanye's and Jay-Z's album "Watch The Throne." The case was settled out of court for an undisclosed amount.

## HOW CAN YOU PROVE SIMILARITY?

There are two ways. One is to show "fragmented literal similarity" – meaning, that the infringing work contains specific copied elements of your original work.



## WHAT'S THE SECOND WAY?

The second type of similarity – called "comprehensive non-literal similarity" – is more of a qualitative "look and feel" issue. It is infringement if the structure of one work is substantially similar to another.

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