

COPYRIGHT PREREQUISITES

17 U.S.C. § 102: © protection exists in original works of authorship fixed in a tangible medium of expression; includes the following works:

▪ literary ▪ musical ▪ dramatic ▪ pantomimes and choreographic ▪ pictorial, graphic, and sculptural ▪ motion pictures / audio visual ▪ sound recordings ▪ architectural

Requirements: the two most basic requirements for © protection is 1) fixation, 2) originality

Fixation - 17 U.S.C. § 101: when copy is *sufficiently permanent or stable* to permit it to be perceived, reproduced, or otherwise communicated for a period of *more than transitory duration*.

Originality: requires 1) independent creation & 2) at least some minimal degree of creativity.

Idea/Expression Dichotomy: § 102(b) says that *no © protection exists in ideas*, procedures, process, or discoveries embodied in a work. Two expressions of the same idea are both protectable under 102(a).

WORKS OF AUTHORSHIP**LITERARY WORKS**

Definition: works expressed in words, numbers, or other verbal or numerical symbols or indicia.

Examples: books, articles, papers, catalogs, data compilations, software.

Limitations: short words / phrases not protected. Also, §117 allows additional copies of computer programs made by the owner of the copy so long as it is for archival purposes only.

DRAMATIC, PANTOMIME, CHOREO.

Scope: works that are meant to be performed.

Examples: plays, dances, screenplays, etc.

Limitations: must be fixed; if unfixed, subject to state law. Subject to special exceptions re: public performance right (e.g. non-profit perf.)

MUSICAL WORKS

Scope: encompasses both music and lyrics.

Examples: "Happy birthday," "3rd Symphony"

Limitations: compulsory cover license allowed under 17 U.S.C. § 115 if:

- 1) author has already authorized distribution of a recording,
- 2) payment of statutorily set royalty for every copy sold
- 3) no material change to fundamental character of work.

SOUND RECORDINGS

Definition: works that result from the fixation of a series of musical, spoken, or other sounds.

Examples: LA Phil recording of 3rd Symphony

Limitations: protects against direct duplication of recording; no protection for creation of similar-sounding recording.

PICTORAL, GRAPHIC, SCULPTURAL

Includes: 2D & 3D works of fine, graphic, applied art, photographs, prints, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans.

Limitations: includes form but not mechanical or utilitarian aspects; art must be identified separate and independent from the utilitarian aspects of the article.

Useful Article: is an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information.

Scope: applies to copies applied to any kind of article; does *not* apply to display & reproduction in ads, commentaries, or news reports (§ 113).

Conceptual Separability: tests include:

- Primary Use
- Primary Aesthetic
- Marketable (or marketed) as art
- Artistic Design Process (creator's intent)
- Temporal displacement (sep. art from func.?)

OTHER WORKS

Audiovisual works: series of related images intended to be shown using machines with accompanying sounds.

Architectural works: design of building as embodied in anything; includes form and arrangement, but does not include standard features, or elements that are func required.

Derivative works: a work based upon one or more preexisting works, such as a translation, or any other form in which a work may be recast, transformed, or adapted; if, as a whole, it represents an original work it is a derivative.

Protecting derivatives: must be transformative, and original; author must contribute substantial, not merely trivial, originality beyond the existing work; originality must not affect scope of any © protection in the preexisting material.

Compilations: work formed by collecting & assembling preexisting materials and arranged in such a way that the resulting work as a whole constitutes an original work of authorship.

COPYRIGHT INFRINGEMENT

Requirements: π must show *ownership* of a ©; that Δ *copied* the protected material without authorization; and a *substantial similarity* between the works as relating to the portion of the protected expression. Feist.

Substantial Similarity: focus must be on the similarity of expression of an idea or a fact, not similarity of the ideas or concepts themselves.

Infringement of Derivative Works: only the owner of a © in a work has the right to prepare, or to authorize someone else to create, a new version of that work; otherwise, it is infringm't.

Facts and Copyright: § 102(b) precludes protection of single facts; likewise, groups of facts (compilations) obtained unlawfully may not be protected (§ 103(a)). Facts in a compilation may be protected, but maybe not any preexisting materials (§103(b)). Does not affect or enlarge the © protection in the preexisting material.

Scope of Compilation Protection: extends to the selection, coordination, and arrangement.

Collective works: include periodicals, encyclopedias, or anything else where a # of contributions, constituting separate and independent works, are assembled into a collective whole.

Joint work: a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

Work made for hire: a work prepared by an employee within the scope of her employment; or a work specially ordered where the parties expressly agree in a signed writing that the work shall be considered a work made for hire.

OWNERSHIP OF COPYRIGHT

Initial Ownership: vest initially in the author(s) of the work; authors of a joint work are co-owners of the © in the work. § 201(a).

Works made for hire: employer is the author unless parties expressly agree in a signed writing to the contrary. § 201(b).

Contributions to collective works: vests initially in the author of the contribution; owner in collective work only gets privilege of using the contribution as part of collective work. § 201(c).

Distinguish from material object: one must distinguish ownership of a © from ownership of any material object in which work is embodied; transferring a material object does not convey rights in the © work embodied in object. § 202.

Transfer of rights: transfer not valid unless there is a *signed writing* by the owner of the rights conveyed. § 204.

Transfer of ©: includes an assignment, license, or any other conveyance, but not including a nonexclusive license. § 101.

TERM OF OWNERSHIP

Work for hire: 95 years from publication, 120 from creation (whichever expires first); no right to terminate.

Assignment: life of author + 70 years; right to terminate assignment after 35 years.

Joint work: 70 years after last's death. §302(b).

Individual author: life + 70 years.

Duration: © in a work created on or after 1/1/1978 begins from its creation date and endures for the life of the author + 70 years after the author's death. § 301.

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