



So... What's Up with Copyright?

Copyright Basics for Small Businesses¹

Imagine as a small business owner you spend an excruciating amount of time and financial resources developing your written content, music, and photos for your website. After all that work the website looks fantastic except for one thing... without your permission your competitor has just replicated your entire intellectual creations! Unlike physical property, which is immovable, the challenge with intellectual creations is that they are easily copied and replicated.

We understand the impact to small business owners and how painful this can be. Copyright empowers you to protect your creative works, make return on your financial investments, and prevent third parties from using your work without permission. With this article, we hope to highlight the important things to know about copyright.

What does copyright protect and for how long?

Simply put, copyright protects works that are **(1) creative, (2) independently developed by a human author, and (3) has been recorded or fixed in some tangible medium of expression** such as in writing or saved as a digital file. For a small business owner, copyright may be used to protect business assets such as movies, musical works, books, software, articles, art works, photos, tv shows, sculptures and the list goes on. These works need only have a minimal degree of creativity to be considered protectable by copyright.

Copyright protection lasts a very long time. Here are the timelines to keep in mind:

- For works created after 1978, copyright protection will last for the life of the creator plus 70 years. If the work is created by multiple authors, the duration will be seventy years after the demise of the last surviving author.
- For works created by organizations, such as corporations and LLC's, through their employees or other [works made for hire](#), copyright protection will last for either 95 years from the date of publication or 120 years from the date of creation, whichever is lesser.

What is not protected by Copyright?

While copyright protects a broad scope of works, it is important to know the types of works copyright does not protect. Copyright does not protect:

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1. **Ideas, procedures, methods, systems, concepts, principles-** Copyright protects the expression of an idea but not the idea itself. So, while you may be unable to copy one of Taylor Swift's popular breakup songs, nothing stops you from writing your own breakup song.
2. **Names, titles, and short phrases-** Copyright may generally not be used to protect the name of a book, song, business, or product. However, a small business owner may have trademark rights in the name of a product or business, if the name is used to identify the source of a good and/ or service.
3. Works not fixed in a tangible form of expression such as a choreographic work that has not been recorded.

For more information on works not protected by copyright, please see this [copyright circular](#).

What are the rights of a Copyright Owner?

Copyright gives a bundle of rights which enables copyright owners to prevent others from copying or using their creative works without their permission. Copyright owners have the exclusive right to:

1. Reproduce or create copies of the copyrighted work;
2. Make alterations, modifications, or adaptations of the copyrighted work;
3. Distribute copies of the copyrighted work to the public by sale, or other means of transfer;
4. Publicly perform the copyrighted work;
5. Publicly display the copyrighted work; and
6. Digitally perform copyrighted sound recordings.

However, some copyright owners may want to commercialize their creations or make them freely available. Through a license, a copyright owner can permit third parties to use their works free of charge or in exchange for some form of compensation.

How do I get copyright protection for my work?

Copyright protection automatically exists for a work upon creation. But the work must satisfy the requirements for copyright protection earlier mentioned. No publication or registration is required. However, prompt copyright registration is beneficial for business owners. One of the most valuable benefits of registration is that it allows the copyright owner to enforce the copyright in a U.S. court of law. Without registration, copyright owners will be unable to bring a lawsuit against a violator of their copyright. Registration also allows for recovery of certain types of damages and/or attorney fees in a lawsuit. Damages are the amount of money the person suing may be given in a lawsuit.

Small business owners often roll out a lot of creative content and it may not be commercially feasible or practicable to register all their works. In addition to seeking counsel from an attorney, if the work is valuable or will be valuable in the future, it's probably best to register that work with the U.S. Copyright Office. Please see this [registration circular](#) for more information on how to register creative content.



Who is the copyright holder/owner?

Generally, the person who has created a copyrightable work is the author of the work and owns copyright.

When entities such as LLCs, companies, non profits, and other organizations hire employees who create copyrightable work as part of their employment, the organization will generally own copyright as “work made for hire.” The rule differs when an independent contractor is hired to create work. The work may not be automatically owned by the employer even if the contractor was generously compensated for the work. When dealing with independent contractors, it is best to define copyright ownership in a written agreement. See this [copyright circular](#) for more information about works made for hire.

Can I use third-party copyrighted content?

Yes! As small business owners, it may be impractical to develop all the creative works needed for a business. In some cases, it may even be cheaper and efficient to use another author's work rather than start afresh. To use another author's work, a small business owner can seek permission from the copyright owner in the form of a license or outrightly buy rights to the work through an assignment. Do not assume that a work is up for grabs because it is freely available online! There are, however, occasions where it may be possible to use third-party content without a license or assignment, which includes [fair use](#). Works that are in the public domain can also be used for free as they belong to the public and cannot be owned. Works in the public domain are works that are not protectable by copyright or whose duration of protection has expired. No permission is needed to use works in the public domain.

Copyright Resources

We know you may have more questions about copyright. Here are some additional resources to consider:

1. [Learning Engine Video Series](#)- These video series provided by the U.S Copyright Office introduces copyright concepts to those new to the topic and are curious to learn more.
2. [Copyright Circulars](#)- These circulars are published by the Copyright Office to provide up-to-date information on various copyright topics such as copyright basics, copyright ownership, and fair use.
3. [Compendium of U.S. Copyright Office Practices](#)- This compendium is the Office’s administrative manual relating to the Copyright Act and its regulations and practices.
4. [Registration processing timelines](#)- This link provides information about processing timelines, and timelines for receipt of certificate.
5. [Registration Tutorials](#)- These instructional video series provide a guide on registering your work with the U.S Copyright Office. Here is a link to the [registration portal](#),
6. [Registration Fees](#)- This link provides a guide on the appropriate fees.
7. [Copyright Overview](#) - This provides an overview of foundational issues in copyright.

BIPOC businesses are strongly encouraged to apply. We partner with eligible small businesses to protect their intellectual property. More information about our small business legal services may be found on our [website](#).