



## **Copyright Notice and Protection**

U.S. copyright laws give protection to authors and artists for "original works of authorship." Such works include literary and dramatic works, music, choreography, paintings, sculpture, sound recordings, and movies. The copyright holder has the exclusive right to take certain actions related to commercial exploitation of the work, or to authorize others to do so.

As copyright laws have been amended over the years, obtaining and protecting a copyright has become simpler in some ways. For example, registration of the copyright is no longer required. A copyright is deemed to exist in any original work at the time it is created and "fixed" in a tangible medium of expression from which it can be perceived, reproduced or otherwise communicated, directly or indirectly, with the aid of a machine or device. Registration with the U.S. Copyright Office (USCO) may, however, be necessary to protect the copyright in court.

### **Copyright Notice Requirements and Advisability**

Both the 1909 and 1976 Copyright Acts required that a notice of the copyright be given in or on published works, even those published abroad. Notice has never been required on unpublished works. The consequences for failing to include the notice could be draconian. The copyright could be lost for failure to attach the required notice, although some specified actions could remedy the omission or error.

The Berne Convention Implementation Act of 1988, by which an international treaty was, in effect, made a part of U.S. law, made placement of the copyright notice optional for works published after March 1, 1989. There may, however, still be residual notice requirements for works published before, but distributed after, that date (the USCO takes no position on this issue). "Publication" is defined as "the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending."

However, proper notice may still aid in a lawsuit for infringement damages. The presence of the notice precludes infringers from claiming in court they had no knowledge of the copyright or that they were infringing on it. The "innocent infringement" defense can result in a lower damage award, but the presence of the notice defeats the defense.

### **"Visually Perceptible Copies"**

The form of copyright notice to be used for visually perceptible copies, i.e., copies that can be seen directly or with the aid of a machine (such as films), should contain three elements:

- The copyright symbol "©," which is the letter "c" enclosed in a circle, or the word "copyright," or its abbreviation "copr.";

- The year of first publication; and
- The name of the owner of the copyright, for example, "Copyright ©2000, XYZ Corporation."

The U.S. is a member of the Universal Copyright Convention (UCC). It requires that the symbol be used in the notice (not the word or abbreviation), along with the second two elements, to guarantee copyright protection in all UCC member countries.

### **"Phonorecords of Sound Recordings"**

The term "phonorecords" includes LP's, 45's, audio tapes, cassettes, CD's and other forms of recordings. Copyright notices on phonorecords also call for three elements:

- The letter "P" enclosed in a circle (akin to the © symbol);
- The year of first publication; and
- The name of the owner of the copyright.

### **General Requirements for Notice**

The notices should appear on works in such a way as to provide "reasonable notice" of the copyright claim. On phonorecords, there may have to be two notices: one for the underlying musical work and one for the sound recording itself, as both are copyrightable. The USCO has issued regulations about the proper placement of the notice, for example:

- For books, on the title page, the page immediately following the title, the front or back of the book, or the first or last page of the body of the work.
- For motion pictures/audiovisual works, etc., with or near the title, with the cast or credits, immediately following the beginning or immediately preceding the end.
- For pictorial, graphic or sculptural works, on the front or back, any backing mounting or framing, or, if attachment is impractical, on a tag or durable label affixed to the work.

### **Errors and Omissions in the Notice**

As noted above, failure to include the copyright notice could result in loss of the copyright under former law, and inclusion of the notice on a work eliminates certain defenses in a infringement action. However, certain errors in the notice may result in treatment as if the notice had been entirely omitted, for example:

- Lack of the symbol or the word "copyright," or allowable abbreviation.
- A notice showing a date more than one year after the date of first publication.
- Lack of, or erroneous, copyright holder's name or the date of publication.
- Notice placed on the work in such a way or in such a place that it does not give reasonable notice of the copyright claim.

An omission does not affect the copyright protection, and no corrective steps are required, for works published after March 1, 1989. For earlier published works, certain

steps specified by the USCO may be required to preserve the copyright. If the steps are not taken, the work may be treated as if it went into the public domain (lost its copyright) five years after publication. At that time, the copyright may not be restored.

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