



U.S. COPYRIGHT PROTECTION: A STEP-BY-STEP GUIDE

1. IS THE WORK COMPRISED OF PROTECTABLE SUBJECT MATTER?

Copyright protects the *original expression* of an idea that is fixed in a tangible form. For example, an idea for a book is not protectable, but the way the idea is conveyed via written text *is* protectable. Generally, music, photographs, movies, books, software code and other works of art are protectable. Common expressions, such as basic geometric shapes or slogans, may not be sufficiently original to warrant protection. *If the work consists of protectable subject matter, move to point 2. If the work consists of unprotectable subject matter (such as a slogan or brand), consider another type of protection (e.g., design patent or trademark).*

2. WHO IS THE AUTHOR OF THE WORK?

The author of the work is the person who created the work. However, if an employee created the work in the scope of her employment, the work is considered a “work made for hire” and the employer (not the employee) is the author. *Move to point 3 once the author(s) is identified.*

3. IS THE WORK WITHIN THE APPLICABLE PROTECTION PERIOD?

For works created on or after January 1, 1978, the duration of a copyright is the life of the author plus an additional 70 years unless the work is a work made for hire or anonymous work. In such cases, the duration is 95 years from first publication or 120 years from creation, whichever is shorter. *If the work is within the applicable duration period, move to point 4. Otherwise, talk to legal counsel since different rules apply for works created before the indicated date and it is possible that it may be used freely by the public.*

4. WHO IS THE OWNER OF THE WORK?

Ownership is necessary to register and enforce a copyright. By default, the creator of the work owns the work unless the work is a work made for hire. For example, if a contractor was hired to design a logo, in most cases, the contractor owns the logo until a written transfer of ownership (i.e., an assignment) is executed. *If the owner of the work is the same party seeking to enforce/register the work, move to point 5. If not, obtain a written assignment transferring ownership before moving to point 5.*

5. PROTECTING THE WORK.

Copyright protection is immediate upon creation of a work of relevant subject matter. However, in many jurisdictions, a federal copyright registration is required to initiate litigation or obtain certain types of damages. To file an application, visit the Copyright Office website (<https://www.copyright.gov/registration/>). Once the application is filed, the Copyright Office will examine the application and may provide feedback, including a refusal to register, or request additional information. Below is the basic information required to file an application:

- Title of work
- Name and address of applicant and current owner
- Name and citizenship of author
- Date and country of first publication (if applicable)
- A copy of the work being registered (to be sent to the Copyright Office)

Always place a copyright notice (i.e., © Fishman Stewart) on a work upon creation. Many people also include the year of publication. A copyright registration is NOT required to use this symbol. >

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