



COPYRIGHT LAW - What You Should Know

Copyright exists from the moment of creation. To be protected under copyright law, it's not necessary for a work to feature the well-known "©" symbol along with the creator's name, nor is it necessary for the creator to have registered the work with the U.S Copyright Office. (Then why does the U.S Copyright Office exist, you ask? Registration provides the creator with benefits, like payment of lawyer fees or automatic monetary compensation, in the instance their copyright is violated.) Copyright automatically exists immediately when a work is completed. For instance, if you take a piece of paper and make a squiggly line on the paper, you own the copyright to that paper. It's that simple.

Copyright protects the expression of an idea, not the idea itself. Not everything is copyrightable. Copyright law is a form of intellectual property protection. If you can hear it, watch it, see it, or read it, it's probably protected under copyright law.

A paper discussing a specific theory is copyrightable. Reproducing the paper without "Author A's" permission is prohibited. The theory discussed in "Author A's" paper is not copyrightable. Anyone is free to describe the same theory in a paper of their own. What if this idea was original to "Author A" and "Author B" also writes a paper about the idea? Under copyright law, "Author B" doesn't even need to credit "Author A", as long as the "Author B's" paper is his or her own unmistakably original expression of the idea.

Copyright and plagiarism are two separate issues. Continuing with "Author A" and "Author B"- As in the scenario above, "Author B" does not credit "Author A" for his original idea, then the "Author B" may be guilty of plagiarism. However, copyright infringement and plagiarism are not mutually concurrent situations. The concepts *can* overlap - sometimes plagiarism may also be copyright infringement, but not always.

Plagiarism is an ethical concept that describes taking credit for something that isn't yours. In institutions of higher education, when a student takes the idea of another and uses it as without giving the appropriate credit or citation, it's not uncommon for the plagiarizing student to be disciplined harshly, if not expelled. If the student had credited or cited the individual who originated the idea, the student would have been safe from disciplinary repercussions.

In copyright law, citing or crediting the creator or author of a work you use without permission does not mean that you are safe from infringement associated with

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unauthorized use. Copyright law deals with the ownership of a work, not with taking credit for something that isn't yours.

Copyright law permits the use of copyrighted material in certain circumstances. There are a few ways to ensure that your use of copyrighted material will not make you liable to suit for infringement. Here are three instances when using copyrighted material is allowed:

- 1. You get permission from the copyright owner.** This is the easiest, most full-proof method to avoid any possible liability associated with your use of copyrighted work. If you're ever in doubt, get permission from the copyright owner.
- 2. The work is produced by the U.S. Government.** Go ahead and use it.
- 3. The work is in the public domain.** A work becomes public domain after a certain amount of time has passed since its creation. In the United States, it's a safe bet that most works are considered public domain 120 years from the date of creation.
- 4. Your use of the work falls under the "fair use" exception.** The "fair use" exception is one of the most commonly discussed exceptions to a copyright. "Fair Use" permits you to use copyrighted material for purposes like criticism, comment, news reporting, teaching, scholarship or research. Unfortunately, determining if any particular "use" of a copyrighted work would be considered a "fair" use is often a difficult task. Although US Courts have never explicitly created a test for determining "fair use", they have, over time, enumerated these guidelines to consider.

- **The nature of your use.** If your work has transformed the original into something completely different, then your use is more likely to be permitted. Noncommercial use is more likely to be permitted than commercial use.
- **The nature of the original work.** Non-fiction receives less protection than fiction.
- **The amount of the work that you have used.** The quality and quantity of the work that you have used is important. Contrary to popular belief, there is no magic proportion or cut-off line. Using only

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- a small portion of the original may be infringement if the portion that you have used is important or central to the work as a whole.
- **The possible market effect of your use on the original.** If your use of the original competes with the original in any economic market, then your use will likely be infringement.

Remember - “fair use” is a defense to copyright infringement. This means if you base your use of a work on thinking it’s a “fair use” and the owner of the copyright disagrees, you will still have to go to court and convince the court that your use is a “fair use.” To avoid the time and money that a court case can consume, or if you are at all unsure that your use would constitute a “fair use,” ask permission from the copyright owner instead.

Licensing Agreement Forms

Included with this guide are two copyright licensing forms.

The first form is a [template](#) of a licensing form for obtaining license to use copyrighted material. You may use as much or as little of the form as you like, and it’s okay to copy it verbatim. (FYI, what I did just there was grant a license to use my copyrighted material - the form! 😊)

The second form shows an [example](#) of how to fill out the copyright license form. The red-colored writing shows where and what you may wish to complete before you send the form to the copyright owner.

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