



Advocates for International Development
Lawyers Eradicating Poverty

GUIDE TO US COPYRIGHT LAW

By Julee L Milham

Legal Guide

Type: Aug 2011

Published: Aug 2011

Last Updated: Copyright, US, intellectual

Keywords: property, IP, licensing

This document provides general information and comments on the subject matter covered and is not a comprehensive treatment of the subject. It is not intended to provide legal advice. With respect to the subject matter, viewers should not rely on this information, but seek specific legal advice before taking any legal action

Any opinions expressed in this document are those of the author and do not necessarily reflect the position and/or opinions of A4ID

© Advocates for International Development 2011

TABLE OF CONTENTS

1. What does this Guide apply to?	4
2. What can be protected?	4
3. Copyright Notice	4
4. How Long Copyright Lasts	5
5. Limits on the Copyright Owner's Rights	5
6. How can I own Copyrights?	5
<i>By Authorship</i>	<i>5</i>
<i>By Operation of Law</i>	<i>6</i>
<i>By Contract</i>	<i>6</i>
7. The Copyright License	6
8. Copyright Registration	6

1. WHAT DOES THIS GUIDE APPLY TO?

This guide addresses current U.S. Copyright Law, which came into effect January 1, 1978.

The Act protects all unpublished works. While not a complete list, it also protects all works first published in the United States or in a country that is a party to an international agreement (such as the Berne Convention, the Copyright Convention) granting such coverage (“a treaty party”); works of an author who, upon first publication, lives in or is a national of the United States or a treaty party; works published by a stateless person; and works published by the United Nations or any of its specialized agencies.

A work is considered “published” when copies of it are distributed to the public or offered to a group of people for further possible distribution, public performance, or public display. Pre-1978 published works are largely governed by the Copyright Act of 1909.

All NGOs should meaningfully consider both their own copyright interests and their use of works by others. Your written materials, websites, artwork, music uses, photographs, and video each include copyrights, sometimes many in a single work. Firstly consider, have we created such works? Have our employees? Have we hired people to create works? Are we using or displaying works created by other people? In each case, you will want a written understanding.

2. WHAT CAN BE PROTECTED?

Copyright exists in original works of authorship expressed in a tangible form. Thus, as soon as you write something down, record it, or otherwise “fix” it, a copyright is born.

Protected works include those that are literary; musical; dramatic; pantomime and choreographic; pictorial, graphic, and sculptural; audiovisual; sound recorded; and architectural. Generally, copyright owners alone have the right to reproduce, prepare derivative works, distribute copies, publicly perform, and display their works. U.S. Copyright law does not protect facts, titles, or ideas.

3. COPYRIGHT NOTICE

Although you are not required to use a copyright notice, do so, whether or not you register your copyright. This notifies people you are the owner and prevents copiers from claiming they innocently infringed your work. The copyright notice is made of:

1. © or “copyright” or “copr.” [use (p) instead of © for recordings]
2. the year the work is first published
3. the name or other identifier of the owner

Since a copyright notice is not required, do not assume an un-noticed creation is not owned by someone.

4. HOW LONG COPYRIGHT LASTS

Copyright now lasts for the author's life plus 70 years. Work "for hire" copyright lasts between 95 and 120 years. When copyright expires, it goes into the "public domain" and you may use it without permission or payment. Although it can be complicated to tell if a copyright has expired, generally, U.S. works made before 1923 are available.

5. LIMITS ON THE COPYRIGHT OWNER'S RIGHTS

Of the exceptions to the copyright owner's exclusive rights, the most common is "Fair Use." Fair Use permits you to make limited use of a copyrighted work for criticising it, commenting on it, news reporting, teaching, scholarship, or research. The courts consider four factors in deciding whether the fair use defence should apply:

1. The **purpose and character of the use**, such as whether the use is to make the user money or is for non-profit educational purposes
2. The **nature of the original work**, whereby the court evaluates the degree of protection the original should receive based on the type of work it is
3. The **amount and substantiality** of the portion of the original work used in relation to its whole
4. The **effect on the potential market** for, or value of, the original work

Lawsuits over Fair Use are rampant and expensive. If your use is for a positive purpose, you may be able to get some support from the author (and head off costly litigation) by getting consent. If your use is to criticise the work, use only as much as needed to make your point. A guide for documentary-makers at www.centerforsocialmedia.org/fair-use/best-practices/documentary provides the type of analysis all NGOs should use when using others' works without consent.

6. HOW CAN I OWN COPYRIGHTS?

You can own a copyright by actually creating a work; as an act of law; or by contract.

By Authorship

As discussed, an author owns the copyright in a work as soon as it is "fixed". If two or more people make a work together intending it to be a "whole", each author may use the work without consent of the other(s) so long as each accounts to the other(s) equally for any money made. If you wish to create a new work based on someone else's work, the new work is a "derivative", and you need permission from the author of the original. Your copyright ownership in the new work would cover only what you contributed to it.

By Operation of Law

The law most often gives ownership of a work to someone other than the creator in a **Work Made for Hire** situation. This applies in two circumstances:

1. The author is an **employee** creating in the scope of his or her job. This makes the employer the “author” of the work. Who is an “employee” generally centres upon who is entitled to control the creative process. Many lawsuits happen over (1) whether someone is truly an “employee” and (2) whether the work was part of the job or done independently. If you have employees creating websites, graphics, artwork, articles, music, or any other works that you want to own, control, or use, you can remove risk by having a written agreement.
2. The author **signs an agreement** to create for you **one of the following**: a contribution to a collective work; part of an audiovisual work; a translation; a supplemental work; a compilation; an instructional text; a test or answer material to a test; or an atlas. If you hire someone to create one of these works without a written agreement, the rights will stay with the author. Also, if you commission a work outside these categories, the work **CANNOT BE** a work made for hire. Instead, you should have a contract as discussed below.

By Contract

You may also transfer or obtain a copyright by a contract called a “**copyright assignment**”. It must be in writing. Merely paying someone to create something for you will **NOT** mean you own it. For instance, if you hire someone to photograph an event, even if you pay them, you do not own the copyrights without a written agreement.

7. THE COPYRIGHT LICENSE

You may also use creative works, or let others use yours, by permission. For instance, you may grant or obtain permission for a work to be included in a brochure, on a website, or in a display. This is called a “**copyright license**”. If the license is non-exclusive, it does not have to be in writing, but you should always put your terms in writing to avoid disagreement later about what was allowed. For you to get or give an exclusive copyright license (ie, where only one party has the right to use a work for some purpose), the agreement must be in writing.

8. COPYRIGHT REGISTRATION

You are not required to register your copyright with the US Copyright Office, but registration provides many benefits. It also puts the world on notice that you own the work. You can do so most inexpensively by opening an account at <https://eco.copyright.gov>.

The U.S. Copyright Office has helpful brochures called “circulars” on all of these topics and more at www.copyright.gov