



REUTERS/Tim Shaffer

# LIFE CYCLE OF A COPYRIGHT





REUTERS/Kham (VIETNAM)

# THE BASICS: WHAT IS A COPYRIGHT?

Thomson CompuMark is the world's leading provider of trademark and copyright research services. We're pleased to provide you with informational materials such as this brochure. The Life Cycle of a Copyright has been designed to provide a basic framework of information for each of the five stages in a copyright's life cycle.

Thomson CompuMark provides a comprehensive range of products and services for copyright professionals, including clients seeking to protect or acquire rights to copyrighted properties.

Thomson CompuMark copyright research reports are well known for their accuracy and reliability, and are used with other research by legal counsel to form opinions about copyright issues.

To find out how our services can help you at every stage of the life cycle of a copyright, please call our Washington D.C. office at **(800) 356-8630**.

Copyright is a form of legal protection provided for "original works of authorship fixed in any tangible medium of expression."

A work is in a fixed, tangible form when it is written down, recorded, or put into a form that may be perceived or communicated, e.g., books, manuscripts, paintings, computer disks, audio or laser disks or films.

In the U.S., once a work is put into tangible form, it is automatically protected by copyright. It may also be protected in other countries with which the U.S. has copyright relations.

Although formal registration is not a condition of U.S. copyright protection, it is often recommended because it provides additional benefits.

Copyright protects textual works, works of the performing arts (musical, dramatic, or choreographic works, sound recordings, and motion pictures), and pictorial, graphic and sculptural works. Works protected by copyright include, but are not limited to: motion pictures, dramatic works, computer programs, novels, sculptures, photographs, songs, fabric designs and sound recordings. Copyright does not protect ideas, short phrases, useful articles or format.

#### **RIGHTS PROTECTED BY U.S. COPYRIGHT:**

- the right to copy or reproduce the work
- the right to publish it
- the right to perform it publicly
- the right to record it
- the right to display it
- the right to make new versions of it

#### **WHO OWNS A U.S. COPYRIGHT?**

The author is the original owner of a copyright. Where a work is "made for hire," the employer is the author and owner of the copyright. Anyone who claims copyright must either be the author or have acquired their right to claim from the author.

# THE FIVE STAGES IN A COPYRIGHTS LIFE CYCLE

## 1. CREATION

Creation is the development of any original work in a fixed, tangible form, including the development of a title, which, although not protected by copyright, serves to identify the work.

The legal author of a work is the person or persons who create a work, or the employer if the work is “made for hire.” Only the author (or those deriving their rights from the author) can rightfully claim copyright. Co-authors of a joint work are co-owners of the copyright in the work, unless there is an agreement to the contrary.

In general, if a work is created by employees acting within the scope of their employment, the work is considered to have been “made for hire,” and the employer is considered the legal author and owner.

Copyright assures that the author, whether an individual or an employer, will derive benefits from his or her creation. Since ownership begins with creation, legal protection is important.

## 2. TITLE CLEARANCE

When a work is being created, a title may be chosen to identify the work. A unique title is important for the promotional value of the work, for preventing legal conflicts and for obtaining certain types of insurance coverage, particularly in the entertainment field.

While titles of creative works are not protected by copyright, they can develop secondary meaning in the mind of the public. Secondary meaning exists when there is enough consumer recognition of a title to warrant protection from a confusingly similar title or trademark. Motion pictures and television productions may be widely distributed, and therefore their titles often develop secondary meaning. They may also be protected by trademark laws. Errors and omissions insurers, which insure productions and their titles against infringement claims, require a title search listing any conflicting titles already in use. Therefore, it’s critical to have accurate and complete research of your title completed at this stage. A title research report provides a list of works identified by a particular title and will help you, your insurer or your attorney determine what level of risk is involved in using a certain title.

## 3. RIGHTS CLEARANCE

This stage entails the gathering of information to determine who has the right to develop, sell, distribute or make copies of a work. This stage is often associated with the process of creating a new work based on a pre-existing work.

When a new work is created from a pre-existing work, the new work is known as a “derivative work” and the pre-existing work is known as the “underlying work.” In order to create a derivative work, you must first obtain permission to do so (rights clearance) from the

copyright owner of the underlying work. You cannot legally reproduce, distribute or perform your derivative work without this permission.

In any case where there may be a purchase of a copyrighted property for any use, the potential buyer of the property should conduct a copyright search to verify that the seller is the true owner.

Identifying all the owners of the various rights in a protected property can be a daunting task. Ownership of any or all of these rights can change hands numerous times through assignments, transfers of rights, dissolution of the company that owned the rights, termination of rights, transition to the renewal term, or through the death of an owner. A copyright search provides information about a specific work, including its publication history, any recorded documents transferring ownership, information about works derived from that work or on which it is based, and items from newspapers and trade publications relating to ownership.

To illustrate how rights clearance works, look at the following example: Movie Company XYZ produced a motion picture (a derivative work) based on a book (an underlying work). In order to produce the movie, XYZ had to determine if another party owned movie rights to the book.

This could be done with a copyright ownership search. Once the movie is completed, XYZ may sell the following rights, among others, to a variety of parties: distribution, television, video, musical scores, rights to derivative works, and foreign language rights.



# THE FIVE STAGES IN A COPYRIGHTS LIFE CYCLE

## 4. PROTECTION & MAINTENANCE

U.S. copyright law automatically protects new works upon creation. However, under current law, registration of a copyright is crucial to provide maximum protection and keep the ownership status of works documented. Protection and maintenance go hand in hand.

Although registration is not mandatory for a work to be protected by copyright, registration has several advantages:

Although registration is not mandatory for a work to be protected by copyright, registration has several advantages:

- Registration puts a claim on public record.
- If registration is made within five years of publication, the certificate is made prima facie evidence of the validity of copyright and the facts stated therein.
- For U.S. works, registration is prerequisite to the filing of an infringement suit in court.
- Filing qualifies you for certain exceptional remedies in the event of infringement—statutory damages and attorney’s fees. If a work is not registered until after infringement, the filer of a successful lawsuit qualifies only for actual damages. In order to maintain protection, assistance may be required with filing, recording

transfers, obtaining copies of documents, etc. Your attorney or Thomson CompuMark can assist in these areas.

### How Long Does U.S. Copyright Protection Last?

- For works created in 1978 or later: The life of the author plus 70 years.
- For works registered or published before 1978: 28 years from the date of publication or registration in unpublished form, followed by a renewal term of 67 years.
- For works “made for hire”: 120 years from the date of creation or 95 years from the date of publication, whichever is shorter.

The use of copyright notice (the ©) is no longer required under U.S. law. However, it is important to use a copyright notice because it informs the public that the work is protected by copyright. A copyright notice should contain three elements:

1. The word “copyright” or the symbol © (© for sound recordings), and
2. The year of first publication of the work, and
3. The name of the owner of the copyright.

## 5. CESSATION

Copyrighted properties eventually reach the end of their life and are no longer protected by copyright. A work that is no longer protected by copyright is considered to

be in the “public domain” and can be used by anyone without permission. Because a work may be protected in a number of countries having different copyright laws and protection terms, it may be in the public domain in some countries but not in others.

Also, new works or derivative works based upon public domain works may be entitled to copyright protection. Further, certain foreign works previously considered to be in the public domain in the U.S. are now protected by U.S. copyright, and some European countries now protect certain works that were previously in the public domain.

It is a complicated matter to determine if a work is still protected by copyright in the U.S. and other countries, and this stage requires accurate research to detail the history and ownership of a work and the advice of legal counsel.

A copyright research report may include information from the U.S. Copyright Office records, private databases, online sources, and a publication history for the work or information about the creator.

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