Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

March 7, 2023

Copyright Law: An Introduction and Issues for Congress

Copyright law grants the authors of original creative works a set of exclusive rights in their creations, including the right to prevent others from copying or selling the work without the copyright holder's permission. The U.S. Constitution empowers Congress to create a copyright system to promote the progress of science and learning. The main goal of copyright law is to spur the growth and spread of knowledge by encouraging authors to create new works.

Copyright protections are critical to many areas of the U.S. economy, particularly in industries such as entertainment and technology. A study by the U.S. Patent and Trademark Office found that copyright-intensive industries—such as computer software, motion pictures, music, and news reporting—contributed $1.29 trillion to U.S. gross domestic product and directly employed 6.6 million people in 2019.

Given the economic and cultural significance of copyright-intensive industries, Congress frequently considers amendments to the Copyright Act, the federal law governing the U.S. copyright system. This In Focus provides an overview of copyright law and highlights areas of current and potential congressional interest.

Copyright Overview

Types of Copyrightable Works

Copyright protection is available for many different types of creative works, including:

- literary works (e.g., books and computer code);
- musical works;
- dramatic works;
- choreographic works;
- pictorial, graphic, and sculptural works (e.g., fine art and photography);
- audiovisual works (e.g., movies and television);
- sound recordings; and
- architectural works.

In all cases, copyright protection applies only to a work's creative expression. It does not extend to the ideas, processes, systems, discoveries, or methods of operation that may be described in the work. For example, while copyright might prevent others from copying the words in a book verbatim, another person could still explain the idea communicated by the book using different words.

Originality and Fixation Requirements

To be copyrightable, a work must be original and fixed in some tangible form. To be *original*, a work must be independently created (i.e., not copied from another person) and have at least a minimal degree of creativity. For example, neither an unoriginal collection of facts (such as an ordinary telephone number directory) nor a work copied entirely from a previous work is copyrightable.

A work must also be *fixed* in a tangible medium of expression to be copyrightable. This means that a work has to be recorded in some way so that it can be later perceived, communicated, or reproduced. For instance, a live musical performance is not fixed unless someone records it, such as by taking a video of the performance on a smartphone or by writing it down in musical notation.

The Copyright Registration Process

An original work is copyrighted once it is created and fixed. Unlike some other forms of intellectual property (e.g., patents), the author need not apply with the federal government to obtain a copyright. Copyright holders may, however, choose to *register* their copyright with the U.S. Copyright Office. Registration yields several benefits; for example, American copyright holders must register their work before they can sue for copyright infringement in federal court.

Copyright Ownership and Transfer

Ownership of a copyright vests initially with the author(s) of a work. In the case of *works made for hire* (such as creative works created by employees as part of their job), the person or corporation for whom the work was made is treated as the author.

Ownership of a copyright is often transferred by contract in whole or part. For example, musical recording artists often assign their copyrights to record companies in exchange for compensation.

Exclusive Rights of Copyright Owners

Copyright holders generally have the exclusive right to reproduce the work, publicly perform and display it, distribute it, and prepare derivative works from it. (*Derivative works* include adaptations of a work, such as a foreign-language translation, sequel, or dramatization.) A person who takes one of these actions without the copyright holder's permission is said to *infringe* the copyright.

Copyright infringement occurs only if the alleged infringer actually copied from the earlier work, so there is no liability if the accused work was created independently. In addition, an accused work will infringe an earlier work only if the two works are *substantially similar*, that is, sufficiently alike in their copyrightable elements.

For most works created today, the copyright does not expire until 70 years after the death of the work's author.

Pocket Constitution

The Declaration of Independence
The Constitution of the United States
The Bill of Rights
Amendments XI–XXVII
Gettysburg Address

TheCapitolNet
TCNFPC.com

Copyright in works made for hire, as well as anonymous or pseudonymous works, lasts for 95 years after publication of the work or 120 years after its creation, whichever is earlier.

Copyright Enforcement

Copyright holders may sue alleged infringers in federal court to obtain money damages, an injunction (i.e., a court order to cease infringing activity), and other legal remedies. Copyright holders concerned with the importation of infringing copies of a work may record their rights with U.S. Customs and Border Protection (CBP) or seek an order excluding particular goods from the U.S. International Trade Commission. The federal government may criminally prosecute some cases of willful copyright infringement.

Copyright Licensing and Statutory Licenses

Persons seeking to use a copyrighted work in a way that might infringe the copyright may seek permission for the use from the copyright holder. Such permission—which may be granted orally or in a formal contract—is called a *license*. Licenses often require monetary payments to the copyright holder, known as a *royalty*.

In some cases, Congress has decided to grant blanket permission to anyone who wants to make defined uses of certain copyrighted works, without having to seek individual permission from copyright holders. These enactments are called *statutory licenses* (sometimes also known as "compulsory" licenses). Rather than being set through private contractual negotiation, the royalty rate is established via statute or by Copyright Royalty Board (CRB) proceedings. For example, many uses of musical works and sound recordings are subject to statutory licenses with rates set by the CRB. (For more information on music licensing, see CRS Report R43984, *Money for Something: Music Licensing in the 21st Century*, by Dana A. Scherer.)

Fair Use and Other Limitations on Copyright

Fair use is an important limitation on copyright that permits certain societally valuable uses that would otherwise be infringements. For example, quoting portions of a copyrighted work in a book review or creating a parody of a work are typically fair uses.

Fair-use determinations are highly contextual. In determining whether a use is fair, courts consider four non-exclusive statutory factors: (1) the purpose and character of the use, (2) the nature of the original work, (3) the substantiality of what was copied, and (4) any market harm from the use. As part of the first factor, courts often look to whether the use is *transformative*; that is, whether it adds new expression, has a different purpose, or alters the original work with new expression or meaning.

Besides fair use, the Copyright Act contains many specific statutory exceptions that allow particular uses of a copyrighted work without permission or royalties. These include certain uses by libraries, in classroom education, or during religious services.

Current Copyright Laws

Copyright has been a part of federal law in some form since 1790. Congress has periodically updated and revised the copyright laws. Over time, Congress has greatly expanded the types of works subject to copyright (originally limited to books and maps), and the length of copyright terms (originally no more than 28 years). Some of these changes served to harmonize U.S. copyright law with international standards and treaties.

The copyright law currently in force is the Copyright Act of 1976, codified at Title 17 of the U.S. Code. Major amendments to the Act include the Berne Convention Implementation Treaty Act of 1988, the Sonny Bono Copyright Term Extension Act of 1998, and the Digital Millennium Copyright Act of 1998 (DMCA).

Considerations for Congress

Congress may monitor the implementation of two significant copyright reforms that came into effect in recent years. The Orrin G. Hatch-Bob Goodlatte Music Modernization Act (P.L. 115-264), which came into full effect in January 2021, changed the statutory licensing process for online distribution of musical works (e.g., interactive streaming). The Copyright Alternative in Small-Claims Enforcement Act of 2020 (CASE Act) established the Copyright Claims Board, an administrative tribunal that may adjudicate certain copyright infringement claims valued up to $30,000. The Board began hearing claims in 2022.

Continuing a longstanding debate, some Members of Congress have introduced bills in the 118th Congress on whether broadcast radio stations must pay royalties to musical performing artists to play those artists' recordings on the radio. Bills such as H.R. 791 and S. 253 would require royalties in some cases, while H.Con.Res. 13 urges Congress to maintain the status quo that allows broadcast radio to play sound recordings without paying royalties.

Members may also reintroduce copyright reform bills introduced in the 117th Congress, such as proposals to enhance CBP authority over suspected infringing imports (e.g., S. 1159, 117th Cong.), or to reform the DMCA's provisions on technologies used to identify and protect copyrighted works online (e.g., S. 3880, 117th Cong.). A proposal to shorten some copyright terms (H.R. 576) has been reintroduced in the 118th Congress.

The application of copyright to artificial intelligence (AI) is another emerging issue. The Copyright Office has taken the position that only a human being—and not an AI—may be an "author" under the Copyright Act. Others dispute that view, or argue that at least some human-assisted outputs of generative AI should be copyrightable. Related issues (and ongoing litigation) include whether AI outputs or the use of material on the internet to "train" AI infringes the copyrights in existing works. (For more on these issues, see CRS Legal Sidebar LSB10922, *Generative Artificial Intelligence and Copyright Law*, by Christopher T. Zirpoli.)

Kevin J. Hickey, Legislative Attorney

IF12339

Disclaimer

Learn how Capitol Hill really works

All of our programs and any combination of their topics can be tailored for custom training for your organization.

For more than 40 years, TheCapitol.Net and its predecessor, Congressional Quarterly Executive Conferences, have been teaching professionals from government, military, business, and NGOs about the dynamics and operations of the legislative and executive branches and how to work with them.

Our training, on-site and online, and publications include congressional operations, legislative and budget process, communication and advocacy, media and public relations, research, testifying before Congress, legislative drafting, critical thinking and writing, and more.

- **Diverse Client Base**—We have tailored hundreds of custom on-site and online training programs for Congress, numerous agencies in all federal departments, the military, law firms, lobbying firms, unions, think tanks and NGOs, foreign delegations, associations and corporations, delivering exceptional insight into how Washington works.™
- **Experienced Program Design and Delivery**—We have designed and delivered hundreds of custom programs covering congressional/legislative operations, budget process, media training, writing skills, legislative drafting, advocacy, research, testifying before Congress, grassroots, and more.
- **Professional Materials**—We provide training materials and publications that show how Washington works. Our publications are designed both as course materials and as invaluable reference tools.
- **Large Team of Experienced Faculty**—More than 150 faculty members provide independent subject matter expertise. Each program is designed using the best faculty member for each session.
- **Non-Partisan**—TheCapitol.Net is non-partisan.
- **GSA Schedule**—TheCapitol.Net is on the GSA Schedule for custom training: GSA Contract GS02F0192X.

Please see our Capability Statement on our web site at **TCNCS.com**.

Custom training programs are designed to meet your educational and training goals, each led by independent subject-matter experts best qualified to help you reach your educational objectives and align with your audience.

As part of your custom program, we can also provide online venue, classroom space, breaks and meals, receptions, tours, and online registration and individual attendee billing services.

For more information about custom on-site training for your organization, please see our web site: **TCNCustom.com** or call us: 202-678-1600, ext 115.

TheCapitol.Net

Non-partisan training and publications that show how Washington works.™

PO Box 25706, Alexandria, VA 22313-5706
202-678-1600 • www.thecapitol.net

GSA Contract GS02F0192X Advantage!®

TheCapitol.Net is on the GSA Schedule for custom training. GSA Contract GS02F0192X