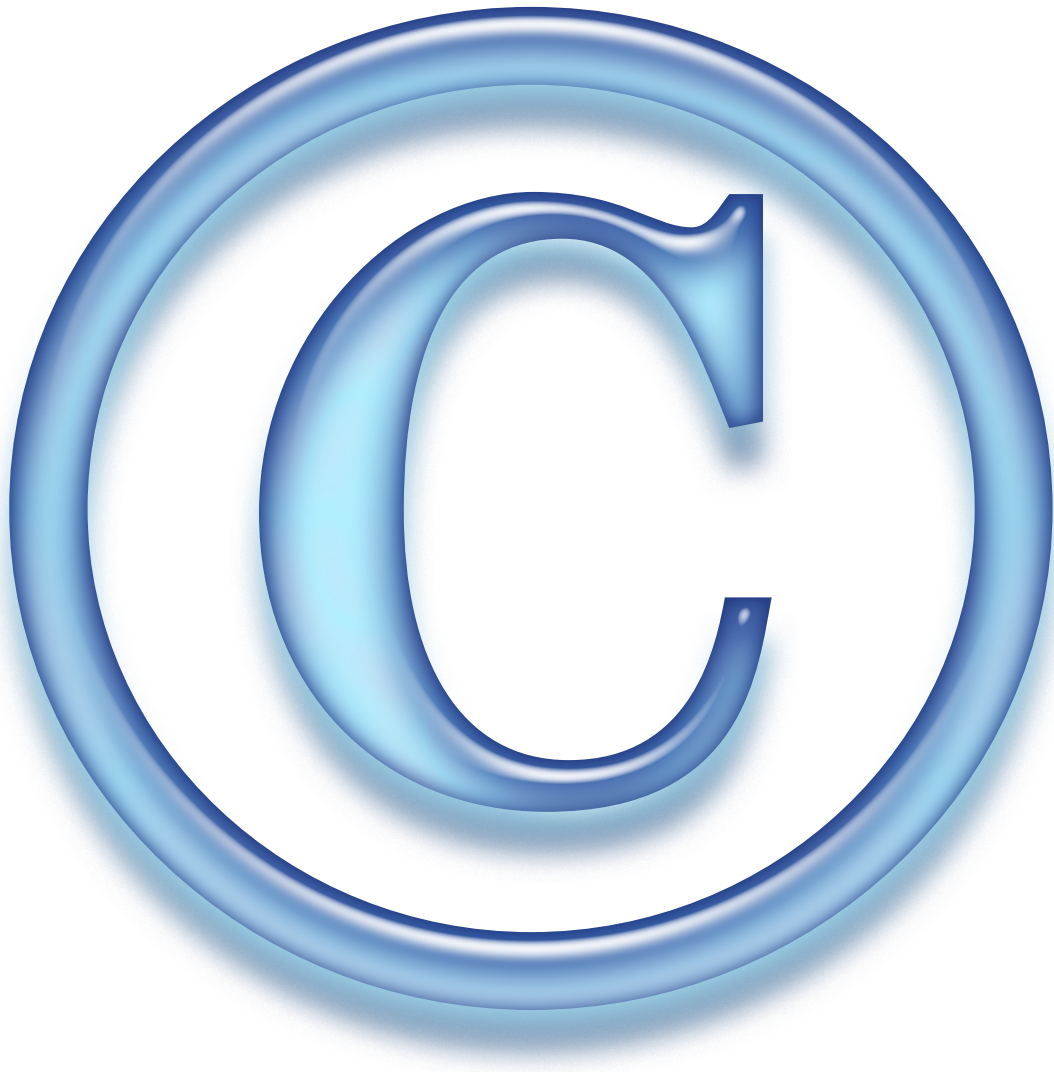


Copyright & Trademark Basics

With Hot Links



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The following are the answers to the most frequently asked questions about copyright, trademarks, and AI on the CreateSpace, now KDP, forums. The answers, in bold, are in my words, however, each is followed, in italics, by specific language from the *Copyright Law of the United States*, the *Compendium of Copyright Office Practices*, various circulars from the Copyright Office, etc.

This PDF contains hot links to both Library of Congress and various online resources.

If you have serious questions, getting legal advice from a copyright or intellectual properties lawyer is recommended.

Copyright & Trademark Basics

PDF With hot links

Your work is copyrighted when you create it.

Your work is under copyright protection the moment it is created and fixed in a tangible form that is perceptible either directly or with the aid of a machine or device. . . . No publication or registration or other action in the Copyright Office is required to secure copyright. . . . Registration is voluntary. Copyright exists from the moment the work is created.¹

A work is “created” when it is fixed in a copy or phonorecord for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version, each version constitutes a separate work. [CLUS §101]²

You do not need to do anything for the work to be copyrighted.

- *Registration is voluntary. . . . Registration is not a condition of copyright protection.*
- *The use of copyright notice is not longer required under U.S. law, although it is often beneficial. Because prior law did contain such a requirement, however, the use of notice is still relevant to the copyright status of older works.*

Copyright notice contains: the symbol, word, or abbreviation of “Copyright,” the year of publication, and the name of the copyright holder, © 2012 John Doe.³

(a) General Provisions.—Whenever a work protected under this title is published in the United States or elsewhere by authority of the copyright owner, a notice of copyright as provided by this section may be placed on publicly distributed copies from which the work can be visually perceived, either directly or with the aid of a machine or device.

(b) Form of Notice.—If a notice appears on the copies, it shall consist of the following three elements: (1) the symbol © (the letter C in a circle), or the word “copyright”, or the abbreviation “Copr.”; and (2) the year of first publication of the work; in the case of compilation s or derivative works, incorporating previously published material the year of the first publication of the compilation or derivative work is sufficient. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying text matter, if any, is reproduced in or on greeting cares, postcards, stationery, jewelry, doll, toys, or any useful articles; and

(3) the name of the copyright owner of in the work, or an abbreviation by which the name may be recognized, or a generally known alternative designation of the owner.

(c) Position of Notice.—The notice shall be affixed to the copies in such manner and location as to

¹ Unless otherwise noted, all copyright related quotes, in italics, are from “Copyright Basics,” United States Copyright Office, <http://www.copyright.gov/circs/circ01.pdf>

² Copyright Law of the United States, and related Law Contained in Title 17 of the United States Code, [CLUS] United States Copyright Office. <http://www.copyright.gov/title17> Inline reference CLUS .

³ For sound recordings the copyright symbol is ®, Unicode 2117, (found in Webdings if your font does not have it)

give reasonable notice of claim of copyright. The Registration of Copyrights shall be prescribed by regulation, as examples, specific methods of affixation and position of the notice on various types of works that will satisfy this requirement, but these specification shall not be considered exhaustive. [CLUS §401]

Although you don't need to include a notice for your work to be copyrighted, having the notice is advantageous.

(d) Evidentiary Weight of Notice.—If a notice of copyright in the form and position specified by the section appears on the published copy or copies to which a defendant in a copyright infringement suit had access, then no weight shall be give to such a defendant's interposition of a defence based on innocent infringement in mitigation of actual or statutory damages, except as provided in the last section of 504(c)(2) [CLUS §401]

Do not use the poor man's copyright: do not mail a copy of your work to yourself as a form of copyright protection.

The practice of sending a copy of your own work to yourself is sometimes called a "poor man's copyright." There is no provision in the copyright law regarding any such type protections, and it is not a substitute for registration. [<https://www.copyright.gov/help/faq/faq-general.html>]

Although registration is not a requirement for copyright protection, it is recommended.

Registration is recommended for a number of reasons. Many choose to register their works because they wish to have the facts of their copyright on the public record and have a certificate of registration. Registered works may be eligible for statutory damages and attorney's fees in successful litigation. Finally, if registration occurs within five years of publication, it is considered prima facie evidence in a court of law. See Circular 1, Copyright Basics, section "Copyright Registration" and Circular 38b, Highlights of Copyright Amendments Contained in the Uruguay Round Agreements Act (URAA), on non-U.S. works. [<https://www.copyright.gov/help/faq/faq-general.html#protect> Also see: Copyright Basics: <https://www.copyright.gov/circs/circ01.pdf>]

Electronic Registration Electronic registration is the preferred way to register basic claims for literary works; visual arts works; performing arts works, including motion pictures; sound recordings; and single serial issues. Electronic registration is also required for group registration of serials. Benefits of electronic registration include faster processing times, status tracking, online payment, and the option to upload certain categories of works or to send a physical copy of a work. The standard filing fee for electronic registration is \$65 for basic claims. However, the filing fee is \$45 if you register one work, not made for hire, and you are the only author and claimant. To access electronic registration, go to the Copyright Office's website at www.copyright.gov. [<https://www.copyright.gov/circs/circ04.pdf> Copyright Office Fees]

You can copyright a work with a pseudonym.

An author of a copyrighted work can use a pseudonym or pen name. A work is pseudonymous if the author is identified on copies or phonorecords of the work by a fictitious name. Nicknames and other

diminutive forms of legal names are not considered fictitious. Copyright does not protect pseudonyms or other names. . . . **If you write under a pseudonym but want to be identified by your legal name in the Copyright Office's records, give your legal name and your pseudonym on your application for copyright registration.** Check "pseudonymous" on the application if the author is identified on copies of the work only under a fictitious name and if the work is not made for hire. Give the pseudonym where indicated. . . . **If you write under a pseudonym and do not want to have your identity revealed in the Copyright Office's records, give your pseudonym and identify it as such on your application.** You can leave blank the space for the name of the author. If an author's name is given, it will become part of the Office's online public records, which are accessible by Internet. The information cannot later be removed from the public records. You must identify your citizenship or domicile. In no case should you omit the name of the copyright claimant. **You can use a pseudonym for the claimant name. But be aware that if a copyright is held under a fictitious name, business dealings involving the copy righted property may raise questions about its ownership.** Consult an attorney for legal advice on this matter.... ["Pseudonyms" United States Copyright Office, <https://www.copyright.gov/circs/circ32.pdf>. Emphasis added]

Titles, names, short phrases, recipes, etc., cannot be copyrighted.

Several categories of material are generally not eligible for federal copyright protection. These include among others:

- works that have not been fixed in a tangible form of expression (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded)
- titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents
- ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration
- works consisting entirely of information that is common property and containing no original authorship (for example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources)

If you are not a US citizen, you can still register your copyright in the US.

Any work that is protected by U.S. copyright law can be registered. This includes many works of foreign origin. All works that are unpublished, regardless of the nationality of the author, are protected in the United States. Works that are first published in the United States or in a country with which we have a copyright treaty or that are created by a citizen or domiciliary of a country with which we have a copyright treaty are also protected and may therefore be registered with the U.S. Copyright Office. [See Circular 38a, "International Copyright Relations of the United States, for the status of specific countries." <https://www.copyright.gov/circs/circ38a.pdf>]

You may use work that is in public domain without getting permission.

While you may use work that is in public domain, you may not use related copyrighted work, for example: an anthology of public domain stories can be copyrighted as a collection—you may not republish the collection—and it could have introductory material or notes that are new, which you may not republish.

Works in public domain, as of January 1, 2024, were: 1) published before 1929 in the US are in public domain; or 2) unpublished by authors who died before 1954; or 3) unpublished anonymous, pseudonymous and works for hire, before 1904.¹

"Publication" is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

To perform or display a work "publicly" means—

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times. [CLUS §101]

[See "Copyright Term and the Public Domain in the United States: <https://guides.library.cornell.edu/copyright/publicdomain>; also CLUS §301-305]

Works found on the Internet are not because they are on the Internet in public domain.

Only works that were published before 1929 (see above), were produced by the government (e.g. Federal Art Project, NASA, etc. See <https://www.loc.gov/free-to-use/>) or works with a Creative Commons Attribution, GNU Free Documentation License, Copyleft notice, etc. can be used freely, although attribution is often required.

Images of public domain 2D art cannot themselves be copyrighted; however images of 3D works can be copyrighted.

Bridgeman Art Library v. Corel Corp., 36 F. Supp. 2d 191 (S.D.N.Y. 1999), was a decision by the United States District Court for the Southern District of New York, which ruled that exact photographic copies of public domain images could not be protected by copyright in the United States because the copies lack originality. Even though accurate reproductions might require a great deal of skill, experience, and effort, the key element to determine whether a work is copyrightable under US law is originality. . . . As the decision of a federal district court, Bridgeman is not binding precedent on other federal or state courts, but it has nevertheless been highly influential as persuasive authority, and is widely followed by other federal courts. [https://en.wikipedia.org/wiki/Bridgeman_Art_Library_v._Corel_Corp].

¹ See "Copyright Term and the Public Domain in the United States: <https://guides.library.cornell.edu/copyright/publicdomain>

#Relevance to UK law. Also see https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1273&context=penn_law_review]

A derivative work is a work that incorporates a preexisting work.

A “derivative work” is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of author ship, is a "derivative work". [CLUS §101]

You may not create a derivative work unless the original work is yours, or is in public domain, or you have permission from the copyright holder.

(a) The subject matter of copyright as specified by section I 02 includes compilations and derivative works, but protection for a work employing preexisting material in which copy right subsists does not extend to any part of the work in which such material has been used unlawfully. [CLUS § 103]

Fair use is an exception to the exclusivity granted the author by the copyright, but it is quite limited: the general advice is if you don't have permission to use a copyrighted work, don't.

Notwithstanding the provisions of sections 106 and 106A, [exclusive rights in copyrighted work] the fair use of a copyrighted work, including such use by reproduction in copies or phono-records or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;*
- (2) the nature of the copyrighted work;*
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole;*
and
- (4) the effect of the use upon the potential market for or value of the copyrighted work. The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors. [CLUS §107]*

[See Stanford University Libraries, "Measuring Fair Use" http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/9-b.html; also <https://www.copyright.gov/help/faq/faq-fairuse.html>]

Fair use does not permit ≤ 10 % usage of copyrighted material.

Under the fair use doctrine of the U.S. copyright statute, it is permissible to use limited portions of a work including quotes, for purposes such as commentary, criticism, news reporting, and scholarly reports.

There are no legal rules permitting the use of a specific number of words, a certain number of musical notes, or percentage of a work. Whether a particular use qualifies as fair use depends on all the circumstances. [19 September 2024 <<https://www.copyright.gov/help/faq/faq-fairuse.html>>]

Work for hire, in the US, is an exception to who holds the copyright for a work: the hiring party holds all the rights—including credit and control—of copyright ownership, not the work's creator.

A "work made for hire" is-

- (1) a work prepared by an employee within the scope of his or her employment; or*
- (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a "supplementary work" is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities. [CLUS §107]*

You may use trademarks in writing (trademark fair use): your hero may drink a Pepsi, drive a Cadillac, and work for McDonald's. These trademarks must be distinguished from ordinary words: capitalizing the first letter is considered sufficient.

A nonowner [of a trademark] may also use a trademark nominatively—to refer to the actual trademarked product or its source. [17 February 2012 <http://en.wikipedia.org/wiki/Fair_use_%28U.S._trademark_law%29>]

Nominative use, also "nominative fair use", is a legal doctrine that provides an affirmative defense to trademark infringement as enunciated by the United States Ninth Circuit,[1] by which a person may use the trademark of another as a reference to describe the other product, or to compare it to their own. Nominative use may be considered to be either related to, or a type of "trademark fair use" (sometimes called "classic fair use" or "statutory fair use"). All "trademark fair use" doctrines, however classified, are distinct from the fair use doctrine in copyright law.

The nominative use test essentially states that one party may use or refer to the trademark of another if:

- 1. The product or service cannot be readily identified without using the trademark (e.g. trademark is descriptive of a person, place, or product attribute).*
- 2. The user only uses as much of the mark as is necessary for the identification (e.g. the words but not the font or symbol).*
- 3. The user does nothing to suggest sponsorship or endorsement by the trademark holder. This applies even if the nominative use is commercial, and the same test applies for metatags.*

Furthermore, if a use is found to be nominative, then by the definition of non-trademark uses, it can not dilute the trademark. [http://en.wikipedia.org/wiki/Nominative_use]

Neither a typeface or calligraphy nor the arrangement of type on a page or screen is copyrightable.

The copyright law does not protect typeface or mere variations of typographic ornamentation or lettering. 17 U.S.C. § 102(b); 37 C.F.R. § 202.1(a), (e).

The U.S. Copyright Office cannot register a claim to copyright in typeface or mere variations of typographic ornamentation or lettering, regardless of whether the typeface is commonly used or truly unique. Likewise, the Office cannot register a simple combination of a few typefonts, letterforms, or typeface designs with minor linear or spatial variations.

. . . the Office cannot register a claim that is based solely on calligraphy because calligraphy is a stylized form of handwriting that is a mere variation of typographic ornamentation. Although calligraphy in itself is not copyrightable, a literary work, a pictorial work, or a graphic work that contains a sufficient amount of original authorship may be registered notwithstanding the fact that it is executed in calligraphic form.

As a general rule, the mere arrangement of type on a page or screen is not copyrightable. See Section 313.3(E). However, if the arrangement produces an abstract or representational image, such as an advertisement that uses letters to create a representation of a person, the Office may register the claim provided that the resulting image contains a sufficient amount of pictorial expression. [<https://www.copyright.gov/comp3/docs/compendium.pdf>, pages 71–72. Also see <https://www.copyright.gov/comp3/chap300/ch300-copyrightable-authorship.pdf>.]

AI generated materials are not themselves copyrightable. If there is sufficient human authorship, they could be copyrightable.

*Under well-established case law, the Guidance explained, “the term ‘author,’ used in both the Constitution and the Copyright Act, excludes non-humans.” In the context of generative AI, this means that “**[i]f a work’s traditional elements of authorship were produced by a machine, the work lacks human authorship and the Office will not register it.**” . . . works containing more than de minimis AI-generated material to disclose that the work contains such material and provide a brief explanation of the human author’s contributions.*

One type of AI, “generative AI” technology, is capable of producing outputs such as text, images, video, or audio (including emulating a human voice) that would be considered copyrightable if created by a human author.

Artificial Intelligence (AI): A general classification of automated systems designed to perform tasks typically associated with human intelligence or cognitive functions. Generally, AI technologies may use different techniques to accomplish such tasks. This Notice uses the term “AI” in a more limited sense to refer to technologies that employ machine learning . . .

Generative AI: An application of AI used to generate outputs in the form of expressive material such as text, images, audio, or video. Generative AI systems may take commands or instructions from a human user, which are sometimes called “prompts.” Examples of generative AI systems include Midjourney, OpenAI’s ChatGPT, and Google’s Bard. [See <https://www.govinfo.gov/content/pkg/FR-2023-08-30/pdf/2023-18624.pdf> Emphasis added, footnotes removed.]

. . . a work containing AI-generated material will also contain sufficient human authorship to support a copyright claim. For example, a human may select or arrange AI-generated material in a sufficiently creative way that “the resulting work as a whole constitutes an original work of authorship.” Or an artist may modify material originally generated by AI technology to such a degree that the modifications meet the standard for copyright protection. In these cases, copyright will only protect the human-authored aspects of the work, which are “independent of” and do “not affect” the copyright status of the AI-generated material itself. [<https://www.federalregister.gov/documents/2023/03/16/2023-05321/copyright-registration-guidance-works-containing-material-generated-by-artificial-intelligence> Emphasis added, footnotes removed]

Many issues, especially copyright fair use, are not clear and often require the courts to rule on specific cases. For any question regarding specific issues, contact a copyright or intellectual properties attorney.

A general comment:

Many people think that having a copyright is special or that it protects your work from infringement. It is special in that it is a remarkable right that is recognized world-wide. It does not prevent infringement. It may and should deter infringement, but it does not in itself prevent it. In the US, registration is a requirement of filing an infringement case, and if you prevail in such a case, it entitles you to particular remedies. However, in itself, registration simply proves that someone, presumably you, registered a work, presumably your work, at a specific date.

If you want perfect, near absolute, protection, do not publish your work. Do not tell anyone about it. Keep it off any computer that could be hacked. Hide it in a closet.

Copyright vs Intellectual Property are closely related fields of law, but IP is broader.

Copyright is a form of protection grounded in the U.S. Constitution and granted by law for original works of authorship fixed in a tangible medium of expression. Copyright covers both published and unpublished works. [<https://www.copyright.gov/help/faq/faq-general.html>]

Intellectual property is generally characterized as non-physical property that is the product of original thought. Typically, rights do not surround the abstract non-physical entity; rather, intellectual property rights surround the control of physical manifestations or expressions of ideas. Intellectual property law protects a content-creator’s interest in their ideas by assigning and enforcing legal

rights to produce and control physical instantiations of those ideas. . . . At the most practical level, the subject matter of intellectual property is largely codified in Anglo-American copyright, patent, and trade secret law, as well as in the moral rights granted to authors and inventors within the continental European doctrine. . . . Outside of the regimes of copyright, patent, trade secret, and trademark, there is a substantial set of case law that allows individuals to protect mere ideas as personal property. This system of property is typically called the “law of ideas” (Nimmer 1954, Epstein 1992). [<https://plato.stanford.edu/entries/intellectual-property/>]

Overview of Intellectual property					
	Utility/plant patent	Design patent	Trade secret	Copyright	Trademark
What’s protected	Inventions—process, machine, or composition of matter	Ornamental characteristics embodied in, or applied to, an article of manufacture	Commercially valuable information (e.g., formulas, techniques, processes)	Art, in an all-encompassing sense—original works fixed in a tangible medium	Marks in commerce that indicate the source or origin of goods or services.
Protects against . . .	Making using, selling, offering for sale, and importing into the U.S.	Making using, selling, offering for sale, and importing into the U.S.	Stealing or unauthorized disclosure	Copying, performing, displaying and creating derivative works	Using a mark in a way that causes likelihood of confusion
Endures until . . .	Generally, from the patent grant date to 20 years from the earliest effective U.S. filing date	15 years from issuance of patent for applications filed on or after May 13, 2015	Publicly disclosed	Life of the author + 70 years for works created on or after January 1, 1978	Abandoned or loss of distinctiveness or secondary meaning
Rights of independent third party creators	None	None	Full	Full	None

[<http://www.uspto.gov/sites/default/files/documents/USPTO-IPBasics-Resources-06192020-508Compliant.pdf>]

Online Resources:

Compendium of Copyright Office Practices: <https://www.copyright.gov/comp3/docs/compendium.pdf>
A 1300+ page PDF, explaining how the Copyright Office interprets the Copyright Law of the US.

Copyright: <https://guides.library.cornell.edu/copyright> An excellent source of information on copyright.

Copyright: <https://fairuse.stanford.edu/> An excellent source of information on copyright.

Copyright Basics: <https://www.copyright.gov/circs/circ01.pdf> A good overview of copyright concepts.

Copyright Circulars: <https://www.copyright.gov/circs/> The list of and links to 60 circulars on a full range of copyright issues.

Copyright Law of the United States, and Related Laws Contained in Title 17 of the United States Code: <http://www.copyright.gov/title17/title17.pdf> The complete copyright law.

Copyright Office home page: <http://www.copyright.gov/>

Copyright Registration Guidance for Works Containing AI-Generated Materials: <https://www.govinfo.gov/content/pkg/FR-2023-03-16/pdf/2023-05321.pdf> The position of the Copyright Office on the registration of AI works.

Copyright Office Fees: [<https://www.copyright.gov/circs/circ04.pdf>]

Frequently Asked Questions: <http://www.copyright.gov/help/faq/>

Registration Portal: <https://www.copyright.gov/registration/>

Fair Use

<https://guides.library.cornell.edu/copyright/fair-use>

<https://fairuse.stanford.edu/overview/fair-use/>

<https://www.copyright.gov/help/faq/faq-fairuse.html>

<https://www.copyright.gov/fair-use/>

https://en.wikipedia.org/wiki/Fair_use

<https://www.nolo.com/legal-encyclopedia/fair-use-the-four-factors.html>

Public Domain

<https://guides.library.cornell.edu/copyright/publicdomain>

http://en.wikipedia.org/wiki/Public_domain