

# MUSIC PUBLISHING

THE COMPLETE GUIDE



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## CHAPTER 1

# COPYRIGHT BASICS

## Introduction

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The Copyright Act (Title 17, United States Code) protects works of authorship in any tangible medium of expression. It is important to note that *ideas* are not protectable, only the *expression* of those ideas. Under this law, creators of (among other things) books, theatrical works, computer programs, motion pictures, music, lyrics, choreography, works of art, and recordings are granted certain exclusive rights to these works.

Copyrights, along with patents and trademarks, are sometimes also called “intellectual property.” While some may debate the “intellectual” qualities of some forms of expression, such as recordings by the Spice Girls or the motion picture *Beavis and Butt-head Do America*, the key concept is one of a property right. Like other kinds of property, such as real property and personal property, the owner has certain rights in how the work is utilized. It may also be sold or licensed to third parties.

## The History of Copyright

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In medieval times through the Renaissance, creative persons such as composers, playwrights, authors, and artists were supported by the state, the church, or privately by wealthy patrons. As such, their works were made available to the public without cost since the needs of the artists were taken care of. With the demise of the ruling and the wealthy classes, certain limited rights were granted to these creators so as to encourage and reward them to continue their artistic endeavors. These rights gave the creators a proprietary interest in their work so that they could sell or license it for reproduction.

In 1710, the British Parliament passed the Statute of Anne, which provided the right to prevent the copying of “writings” for 14 years (renewable for another 14 years), vested in authors and their assigns. French laws of 1791 and 1793 encompassed other works of “fine art,” granting authors rights to control the copying, distribution, and sale of their works plus a fixed term of rights after each author’s death.



## Copyright in the United States

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The concept of protection for creative works in the United States has been a part of our law since our country was born. Article I, Section 8 of the United States Constitution states,

*“The Congress shall have the power . . . to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”*

It is these rights that are contained in the current Copyright Act. Let’s break down this clause phrase by phrase:

*The Congress shall have the power* — the Copyright Act is a federal law and only Congress has the right to amend it (and the Supreme Court the ultimate right to interpret it);

*to promote the progress of science and useful arts,* — it is in the best interests of the public at large to encourage the development of scientific discoveries as well as encourage artists to create;

*by securing for limited times to authors and inventors* — as will be discussed below, “creators” are given a limited and defined period of time to exploit their creations for monetary purposes. There are those who believe that the time period is too long and that the public should be given free access to these creations, but Congress has stated otherwise;

*the exclusive right to their respective writings and discoveries* — as discussed immediately below, there are exclusive rights granted to creators, and they have the sole right to control the use of their creations.

## The Copyright Act

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Section 106 of the Copyright Act of 1976, which took effect January 1, 1978, grants to copyright owners the exclusive rights to do and to authorize any of the following:

1. To reproduce the copyrighted work in copies or phonorecords (audio-only devices, such as records, compact discs, or audio cassettes);
2. To prepare derivative works based upon the copyrighted work, such as converting a book into a movie;
3. To distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. In the case of literary, musical, dramatic, and choreographed works, pantomimes, motion pictures, and other audiovisual works, to perform the copyrighted work publicly. The performance may be live, by broadcast, or over loudspeaker in a public place (store, museum, etc.). “Public” is defined as persons outside of your family or immediate circle of acquaintances;
5. In the case of literary, musical, dramatic, and choreographed works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture and other audiovisual works, to exhibit the copyrighted work publicly; and



6. In the case of sound recordings, to perform the work publicly by means of a digital audio transmission. (The sixth exclusive right flows from the Digital Performance Right in Sound Recordings Act [“DPRA”], which was adopted by Congress in 1995.)

It should be noted that, even though this book focuses on music publishing and musical composition, there is often a second copyright in the master recording that must also be considered when licensing the musical composition. While a song has only one set of writers and publisher, the same song may be recorded by multiple artists. The copyrights to the master recordings by those artists are generally controlled by the record company to whom the artist is signed.

There are some exceptions to these exclusive rights, such as reproduction by libraries and archives, educational and religious uses, Fair Use, and the right of first sale. Each of these is defined (more or less precisely) by the Act and by the cases brought involving each exception.

But what do these rights really mean? It means that any person wishing to use a copyrighted work must secure the permission of the copyright owner and negotiate a fee for the use intended. Determining who owns the copyright is not always that easy. As a property right, copyrights can be bought and sold, therefore the ownership may change hands many times over the years. There may be multiple owners, each of whom may need to be contacted. Some agreements between co-owners allow for one controlling party to administer the entire copyright. Others require separate administration by each party for their respective shares.

With rare exceptions, permission and fees for the use of a copyright are totally negotiable. Those exceptions are the statutory mechanical rate for phonorecords and ringtones, and rates for certain types of uses on the Internet, such as tethered downloads and interactive streaming, which are based upon a compulsory license. Use without permission and negotiation with all relevant parties is infringement and can subject the offender to both monetary damages and an injunction against further distribution, to be discussed in more detail below.

## Term of Copyright

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How long does copyright protection last? The rights discussed above are granted to the copyright owner for a limited time. After the expiration of that time, the work falls into the “public domain,” which means that anyone can use or copy the work without permission or payment.

Under the 1976 Copyright Act, which became effective January 1, 1978, works created after 1978 were protected for the life of the author plus 50 years. If there is more than one author, the term was 50 years after the death of the last surviving author. In 1998, Congress passed legislation (the so-called “Sonny Bono Extension Act”) to extend protection to life of the (last surviving) author plus 70 years.

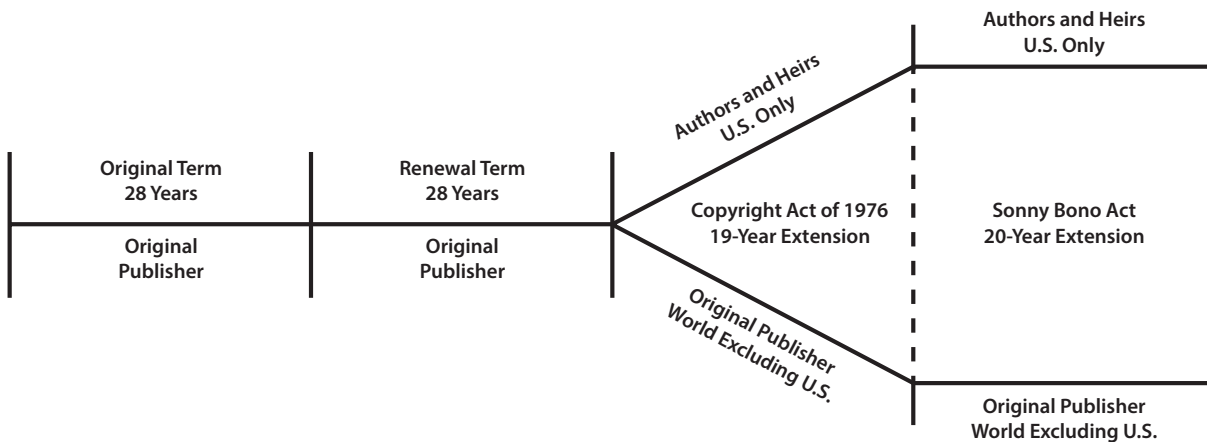
### Post-1978 Works



Under the previous Copyright Act of 1909, works created had an original term of 28 years plus a renewal term of an additional 28 years. Prior to 1992, a failure to properly renew a copyright in the 28th year threw the work into the public domain. In 1992, however, a bill was passed that automatically renewed a work copyrighted between January 1, 1964, and December 31, 1977, which served to benefit the widows and children of creators who may not have been familiar with the laws about copyright and music publishing.

The 1976 Act added 19 years to this term, which may be claimed in the United States by the author or their heirs, and another 20 years was added in 1998, for a total of 95 years. These additional 19- and 20-year terms only apply, however, to works created after 1923. Anything created prior to that was already in the public domain when the extensions provided for in the 1976 Act were passed.

### Copyright Term for 1923–1977 Works



The term for a “work made for hire” is 95 years from date of publication or 120 years from creation, whichever comes first. A “work made for hire” is (1) a work prepared by an employee within the scope of his employment or (2) a work specially ordered or commissioned for use as contribution to a collective work, such as a motion picture. For copyright purposes, the employer is considered the “author” of work and at no time does the creator have an ownership interest in the work.

The terms of copyright in foreign territories vary, although they are based upon the “life plus X years” concept. In the European community, the term is generally life of the author plus 70 years. In other territories, it may extend to life plus 99 years. Because of these different terms, a work could go into the public domain in the United States and still be protected in foreign territories, or *vice versa*.

Under the current Act, copyright protection exists in original works of authorship “fixed” (see definition in §101 of the Act) in any tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. This means that a song that is sung, but not recorded or written down, is not protected.

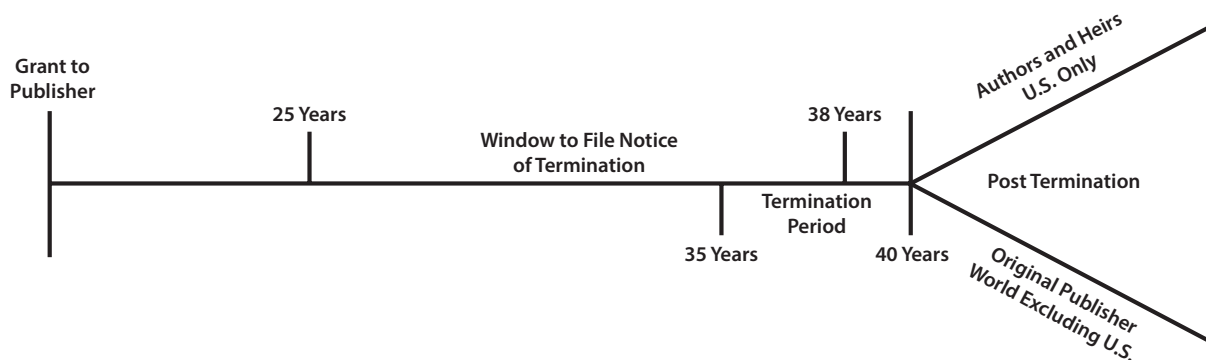
The so-called “poor man’s copyright,” in which you mail a sealed copy to yourself and never open it, is of limited value. While it allegedly establishes the date of the postmark as proof of the date of creation, it is not a substitute for proper registration.

## Termination and Recapturing of Copyright

Under the 1976 Act, the grant to publishers of the copyrights for works created both under the 1909 Act and the 1976 Act (see §203 and §304) may be terminated in the United States at certain points in time, with the remaining copyright term in the United States being recaptured and controlled by the writer or their heirs.

For works created after 1978, a window exists whereby the authors (or their heirs) may terminate a transfer of rights (such as from a songwriter to a publisher) commencing 35 years after the date of the transfer and ending 40 years after the date of the transfer. These transfers must be made by the original author, not the author's successors. Notice must be given to the copyright proprietor no less than 10 years, nor more than 2 years prior to the effective date of the termination. In other words, notice may be given as early as year 25 after the transfer, but no later than year 38 after the transfer. Once a transfer is completed, the new rights holder has control over the copyright for the remainder of the term. In the event that the author has a surviving spouse but no surviving children or grandchildren, then the termination right is owned entirely by the author's spouse. If the author dies leaving a spouse and children, then the termination interest is owned 50% by the author's spouse and 50% by the author's children on a *per stirpes* basis. In the event of multiple authors as part of the same grant, a majority of them must file for termination in order for the rights to revert to ANY of them. If a majority of the parties cannot agree on the termination, it is possible for the original publisher to retain all rights, as the heirs are unwilling to cooperate in a joint effort to recapture the rights.

### Termination of Post-1978 Works



In one of the first lawsuits based on this right of termination, *Scorpio Music S.A., et. al. v Victor Willis*, first decided in 2012, Victor Willis, lead singer for The Village People, filed notice of termination for songs co-written by him post 1977, including “YMCA” and “In the Navy,” and assigned his copyright interests to Can’t Stop Music, sub-publisher for Scorpio Music, the original French publisher. Willis translated lyrics from the original French language songs, so his grant to Scorpio was independent of the grant by the original writers. Scorpio argued that Willis was the only author to file notice of termination and that, under §203(a)(1), a majority of all authors who transferred rights must join in the

termination. The U.S. District Court for the Southern District of California held that, since the grants were separately made, Willis' individual grant made him eligible to terminate his share of the rights granted in the songs.

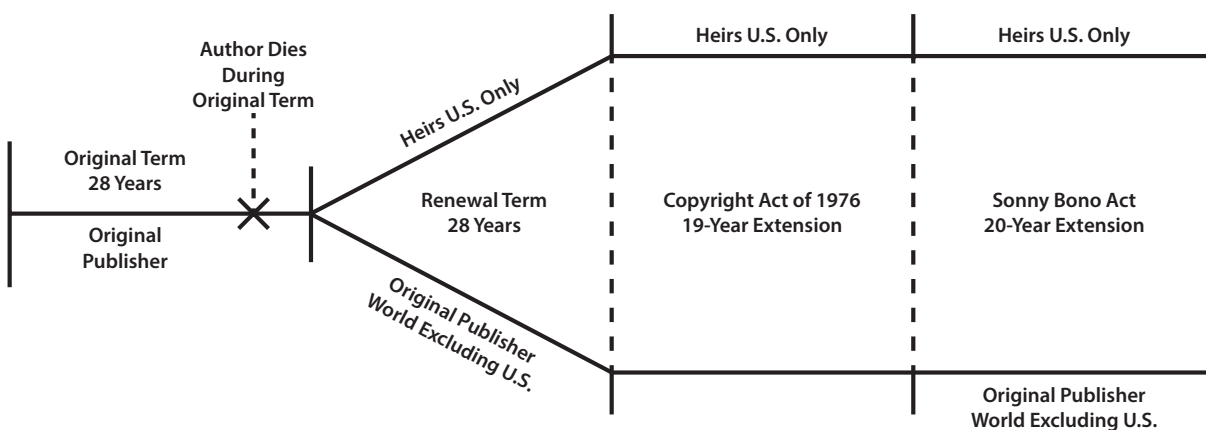
2013 is the first date that these terminations can take effect, as 2013 is 35 years after the commencement of the current Act in 1978.

For works created before 1977, the rules for termination are a little more complicated. Remember that for these works, the term was 28 years plus a 28-year renewal, with an additional 39 years added under the 1976 Act and Sonny Bono extension.

In most older songwriter/publisher agreements, the writer granted the publisher rights for the initial term and all renewals or extensions to which the writer became entitled. If the writer was still alive at the end of the first 28-year term, the original agreement granted the renewal term to the publisher. The termination "window" under this section is a 5-year period beginning at the end of the 56th year from the date that copyright is secured and continuing through the last day of the 61st year from the date copyright is secured.

If, however, the writer was deceased prior to the expiration of the initial term, the renewal right had not yet vested in year 29, so the renewal grant in the original term did not vest in the writer, the renewal grant by the writer was invalid and the heirs (which could be the writer's spouse and both legitimate and illegitimate children) could file notice of termination and regain the copyright for the second 28 years as well as the remaining 39-year extension. If there is more than one author of the work, and only one author is deceased, that author's heirs can regain his share of the work, with the remaining share kept by the copyright holder.

### Termination of 1923–1977 Works



§304(a)(1)(C) of the Act designates the persons entitled to renew a copyright registration in the event that the author has died prior to the commencement of the renewal term: "(ii) the widow, widower, or children of the author, if the author is not living, (iii) the author's executors, if such author, widow, widower, or children are not living, or (iv) the author's next of kin, in the absence of a will of the author." Children of the author could be either legitimate or illegitimate children. In the event that the author has a surviving spouse but no surviving children or grandchildren, then the termination right is owned

entirely by the author's spouse. If the author dies leaving a spouse and children, then the termination interest is owned 50% by the author's spouse and 50% by the author's children on a per stirpes basis.

If the author survives in the renewal period, the copyright owner retains ownership through the second 28 years. Upon expiration of the 56-year period, however, the author or their heirs again has the right to terminate the grant to the publisher and regain the balance of the copyright term by filing notice with the copyright owner within five years of the end of the 56-year term.

While there is no specific form that must be used for termination either for §304 or §203, there are certain elements that must be contained in the notice. The party terminating must specify under which provision they are terminating to allow the current copyright owner to evaluate the validity of the intended termination. The notice must contain the name of the grantee (or their successor in interest) whose rights are being terminated. Notice must also contain the specific titles to be terminated, the name of at least one of the authors, the date the copyright was originally secured and, if available, the original copyright registration number. All of this information verifies that there is no confusion about which song's copyright is being terminated. Notice should also set out the effective date of the termination, which is set by the terminating party so long as it falls within the termination window. Notice should also list the party filing for termination and, if not the author, the relationship of the party seeking termination, such as a widow or surviving child. Lastly, the notice of termination should be filed with the Copyright Office for proper registration.

Under either scenario, once the copyright grants have terminated, the author or their heirs have the full rights accorded to copyright owners in the United States. They can administer the copyrights themselves, engage an administration company, assign the copyrights to a new publisher, or enter into a new agreement with the previous publisher on more favorable terms.

It should be noted that these terminations only apply to the rights to the copyright in the United States. Although the statute does not limit this termination to the United States, only the United States has these rights of renewal and termination, so industry custom is to limit the rights of the heirs to U.S. rights. The grantee of the original rights remains as the copyright owner in all territories outside the United States, leading to multiple copyright owners of the same work. As will be demonstrated in subsequent chapters, this can have an effect on potential licensing deals for the work.

## Copyright Infringement

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The improper use of a copyrighted work, either without the permission of the owner or in violation of the terms of a compulsory license, is an infringement of that copyright. Infringement takes two basic forms: (1) the use of a copyrighted work without the necessary license, and (2) plagiarism.

For use without the necessary license, it is a relatively easy matter for the owner to prove the use and the lack of a license. It is in these situations where the defenses of Fair Use and parody usually come into play to alleviate the need for a license.

For plagiarism, proving the illegal copying is more complex. There are three key elements to proving a claim of plagiarism: (1) proof of ownership of the work allegedly being infringed; (2) that the allegedly infringing work is "substantially similar" to the original work; and (3) the defendant had "access" to the original work in order to have copied it. These are issues for the trier of fact to determine and must be proved by the plaintiff in that sequence, i.e., if there is no substantial similarity, access doesn't matter.

The classic case regarding plagiarism involves former Beatle George Harrison, *Bright Tunes Music v. Harrison's Music*, 420 F. Supp. 177 (S.D.N.Y. 1976). One of Harrison's first solo works after the breakup of The Beatles was a song called "My Sweet Lord," recorded in 1970. Shortly after the release



of the song, Harrison was sued by the publishers of a song titled “He’s So Fine,” which was written by Ronnie Mack and recorded by The Chiffons in 1962. Following the release of Harrison’s version of “My Sweet Lord,” musical similarities between it and “He’s So Fine” were remarked on almost immediately—*Rolling Stone’s* album review of January 1971 even referred to “My Sweet Lord” as an “obvious re-write of the Chiffons’ ‘He’s So Fine.’ ” By March, proceedings were under way for what became a prolonged copyright infringement suit, lasting over 10 years.

In September 1976, a U.S. district court decision found that Harrison had “subconsciously” copied the earlier tune. One of the theories was that, since the members of The Beatles were known to be fans of American music, Harrison probably heard “He’s So Fine” when it was popular in the early 1960s, thereby inferring access and satisfying the two-part test.

In 1978, before the court decided on damages in the case, Harrison’s former manager Allen Klein, who had represented him earlier in the proceedings, purchased the copyright to “He’s So Fine” from Bright Tunes. In 1981, the court decided the damages amounted to \$1,599,987, but that due to Klein’s duplicity in the case, Harrison would only have to pay Klein \$587,000 for the rights to “He’s So Fine”—the amount Klein had paid Bright Tunes for the song. At some point later, Harrison purchased the copyright to “He’s So Fine,” which his company still owns today.

## Damages for Infringement

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Under §500, et seq. of the Act, the remedies for infringement are described. One remedy described in §502 is for a court to “grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright,” which would include preventing any further distribution or sale of the infringing product.

Another remedy, as described in §503, is for the infringing articles to be impounded and destroyed. This would include all copies of phonorecords, films, DVDs, or other products that contained the infringing work.

Still another remedy is actual damages to the copyright owner or profits made by the infringer. For example, if an infringer sells 10 copies of a CD, and the mechanical rate for the publisher would be \$0.091 for that copy, the actual damages would be \$0.91. If for those same 10 CDs, the infringer made a profit of \$5.00 per CD, the profits would be \$50.00. Neither of these amounts would warrant bringing a lawsuit for copyright infringement. In either case, the court could decide to impose statutory damages that would exceed those amounts, as described below.

If the court finds, however that the infringement was committed willfully, the amount of statutory damages can increase dramatically.

Statutory damages are provided in §504 (c) of the Act. Basic damages for copyright infringement are currently between \$750 and \$30,000 per work, at the discretion of the court; however, plaintiffs who can show willful infringement may be entitled to damages up to \$150,000 per work. Defendants who can show that they were “not aware and had no reason to believe” they were infringing copyright may have the damages reduced to \$200 per work.

Lastly, per §505, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. The court may also award a reasonable attorney’s fee to the prevailing party as part of the costs.

In the real world, however, many claims of copyright infringement are settled between the parties before litigation commences or before a verdict is reached at trial. The parties can mutually agree on a remedy that compensates the owner of the infringed work for something less than what the statutes

might require but also alleviates both parties of the time and expense that would be devoted to a trial as well as the risk of success and failure. A noted judge once told me, “The best compromise is one that leaves both parties slightly unhappy.” A settlement is just that: a compromise that resolves the issues between the parties while compensating the infringed party in a manner that they deem acceptable under the circumstances.

## Exceptions to the Exclusive Rights of Copyright Owners

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There are certain uses of copyrighted material that do not require permission or licensing from the copyright owner, as set out by various sections of the Act limiting the exclusive rights granted to the copyright owner.

- A. The right of first sale: Once a copy of a copyrighted work is obtained legally, either through purchase or license, that copy may be resold by the purchaser to a third party without the permission of or compensation to the original copyright owner. See §109. Effect of transfer of particular copy or phonorecord.

If a party buys a CD containing musical compositions as well as performance by an artist, that party has the right to sell or transfer that particular copy of the CD, but does not have the right to reproduce copies of any of the copyrighted material on the CD. See §109(a).

The same concept would apply to a piece of art. The purchaser of a painting has the right to sell that painting but not the right to make posters or other reproductions of the painting. That said, there is a little-known California law called the “Resale Royalty Act” (*California Civil Code* §986). What this law essentially states is that when a person purchases fine artwork and then resells it for more than \$1,000, such seller must pay five percent (5%) of the “gross sales price” to the artist who created the artwork. See the code section for more details.

In late 2011, a bill was introduced in Congress that would amend §106 of the Act and provide similar compensation to living artists throughout the country for artwork sold by auction houses for more than \$10,000. See H.R.3688—the proposed Equity for Visual Artists Act of 2011. As of the date of this writing, this bill has not passed.

However, in the spring of 2013, the Supreme Court held that the first-sale doctrine applies to copies of copyrighted work lawfully made and purchased abroad. In *Kirtsaeng v. John Wiley & Sons, Inc.*, No. 11-697 (U.S. Mar. 19, 2013), the court held that textbooks originally purchased in Thailand could be resold in the United States, as the purchase of the books was made legally.

- B. Reproduction by libraries and archives: it has been determined that libraries and other repositories of copyrighted works shall have the right to make copies for archival purposes but not for distribution. For example, UCLA has a large library of old films and television programs that are currently on film or videotape that is deteriorating. Under this principle, UCLA is allowed to make digital copies of these films so that they may be viewed by researchers or members of the general public at the UCLA facilities. UCLA may not, however, make copies of these productions for distribution or sale to the public. See §108.
- C. Certain uses by educational and religious organizations are also protected under these exceptions to further their goals. §110 (1) of the Act allows for the “performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction.” For example, a teacher in a



literature class may make copies of a verse from a poem as an instructional aide for her lessons. This would be permissible, while copying an entire book by the poet in question would not be.

§110 (3) of the Act allows for “performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly” if the performance is free or the proceeds are used for religious purposes.

D. Fair Use: This is one of the most difficult and misunderstood sections of the Act. §107 explains that the use of copyrighted material 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 falls under this doctrine, the factors to be considered shall include (quoting §107):

- (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.*

These are *very* subjective tests that are the basis for many court decisions. But the Fair Use doctrine is often misquoted as an excuse to infringe copyrights by parties that know the term “fair use” but not its meaning under the law. In some cases, the party making the claim feels that it isn’t “fair” that they can’t use the copyrights of very successful musical artists who have a lot of money, while the user has very little. In the TV and film world, often the producers use the doctrine as an excuse to use a copyright for which they cannot get permission to use for a reasonable fee or permission is denied altogether.

## Benefits of Registration

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While copyright registration is not a condition of copyright protection, there are certain advantages to registering your copyrights with the Copyright Office.

1. Registration is a prerequisite to filing an infringement suit in court for works of U.S. origin.
2. If registration is made within three months after publication of the work or prior to an infringement of the work, statutory damages and attorneys’ fees will be available to the copyright owner. Otherwise, the copyright owner may only obtain an award of actual damages and/or profits of the infringing party.
3. Registration establishes a public record of the copyright claim, and, if made before or within five years of publication, registration will establish *prima facie* evidence of the validity of the copyright.
4. Registrations may be recorded with the U.S. Customs Service for protection against the importation of infringing copies. For more information, go to the U.S. Customs and Border

Protection website at [www.cbp.gov/xp/cgov/trade/priority\\_trade/](http://www.cbp.gov/xp/cgov/trade/priority_trade/) and click on “Intellectual Property Rights.”

## Basic Registration Process

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1. *Select Method of Registration:* Paper, Form CO, or Electronic. Form CO is a new fill-in form for basic registrations, which replaces Forms TX, VA, PA, SE, and SR. It is basically a hybrid of the electronic filing and paper filing system because you fill in the form on your personal computer, but then you print and mail the form to the Copyright Office for processing.

If filing with Form CO, go to the Copyright Office website at [www.copyright.gov](http://www.copyright.gov) and click on “Forms.” If filing electronically, access eCO by going to the Copyright Office website and clicking on “Electronic Copyright Office.”

2. *Select Proper Form:* If filing by paper, you must call the Copyright Office at (202) 707-3000 and request that they mail you the proper form—Form TX (literary works); Form VA (visual arts works); Form PA (performing arts works, including motion pictures); Form SR (sound recordings); and Form SE (single serials). Certain applications must be completed on paper, such as Form RE renewals of copyright claims and forms for group submissions. These forms are still available on the Copyright Office website at [www.copyright.gov/forms/](http://www.copyright.gov/forms/).
3. *Complete Application:* The application may be completed by the (1) author, (2) the copyright claimant, (3) the owner of exclusive right(s) or the authorized agent of such author, (4) other copyright claimant, or (5) owner of exclusive right(s). Under certain circumstances, multiple works can be registered with one application and one fee.

In what is referred to as a “compilation copyright registration,” multiple works can be registered using the same form and paying the same single fee if all the works have the same copyright claimants. If there are different claimants, those works must be registered separately although, if there are multiple works with these same “different” claimants, they can all be registered together as well.

This usually works best for works that have not yet been released to the public. Once released, for maximum protection the works should then be registered individually.

4. *Pay Fees:* Effective August 1, 2009, registration fees for basic claims are \$65 for paper filings, \$50 for Form CO filings and \$35 for eCO filings. The method of accepted payment varies based on the type of filing. Basic claims include (1) a single work; (2) multiple unpublished works if they are all by the same author(s) and owned by the same claimant; and (3) multiple published works if they are all first published together in the same publication on the same date and owned by the same claimant.
5. *Submit Deposit:* Pay special attention to the deposit requirements as they vary based on the type of work being registered. Generally, unpublished works and works first published outside of the U.S. require a deposit of one complete copy or phonorecord. Works first published in the U.S. on or after January 1, 1978, require two complete copies or phonorecords of the “best edition.” The Copyright Office has interpreted this to mean that eCO filers may still need to mail in a hard copy or copies to comply with the “best edition” language of the Copyright Act. For example, if you are applying for registration of a published CD on eCO, you must currently mail in hard

copies of the CD as the actual CD is considered the “best edition” of the published work (not the electronically uploaded files). You must print out a shipping slip from the eCO website to accompany such deposit.

6. *Receipt of Registration Certificate:* The Copyright Office website states that 90% of electronic (eCO) filers should receive a certificate within 6 months of completing their application; Form CO-filers within 8 months; and paper filers within 18 months. Regardless of the time needed to process the application, the effective date of registration is the date that the Copyright Office receives *all required elements in acceptable form*. Therefore, it is very important to read all instructions on the application to make sure you are submitting the application, fees, and deposit in the manner indicated, which is always subject to change. This is especially true now that there are three distinct methods of applying for registration.

For the latest information on the registration process for copyright, see [www.copyright.gov/eco/faq.html](http://www.copyright.gov/eco/faq.html).

## MECHANICAL LICENSE (I)

This is a negotiated license drafted from the perspective of the publisher.

PUBLISHER NAME  
STREET  
CITY, STATE, ZIP

[Date]

RECORD COMPANY (OR "LICENSEE") NAME  
STREET  
CITY, STATE, ZIP

Title: \_\_\_\_\_

Composer(s): \_\_\_\_\_

Publisher and Copyright Date: \_\_\_\_\_

Performance Rights Affiliation: \_\_\_\_\_

Artist: \_\_\_\_\_

Record Title & Catalog No.: "\_\_\_" - \_\_\_\_\_

ISRC # \_\_\_\_\_

Song Timing: \_\_\_\_\_

Date of Release: \_\_\_\_\_

Gentlemen:

You have advised us that you wish to use the above captioned copyrighted musical composition (hereinafter referred to as the "copyrighted work"), under the compulsory license provision of the United States Copyright Act (hereinafter referred to as the "Copyright Act"), to wit: Title 17, U.S.C. Section 115, upon the parts of instruments serving to reproduce mechanically the copyrighted work.

We hereby grant to you

a non-exclusive license pursuant to the compulsory license provision of the Copyright Act to use the copyrighted work or any portion thereof, whether words and/or music, including the title thereof, in the manufacture, production, recording, distribution and sale of records upon the terms and conditions hereinafter set forth.

Mechanical licenses are granted for one composition, performed by one artist, on one recording, so these details are filled in here. Note the fields for catalog numbers and ISRC numbers, to verify the single use. Any other uses of this recording (such a compilation or soundtrack album) require a new, unique license.

Song timing and date of release identify the basis for the amount of the statutory royalty.

Per Section 115, the record company sent a Notice of Intention to obtain a compulsory license.

Rather than strictly rely on the compulsory license provision, the publisher is granting a negotiated license to the record company, which will modify some of the terms of the compulsory license while retaining others.

All mechanical licenses are non-exclusive.

You shall have all rights which are granted to, and all the obligations which are imposed upon, users of the copyrighted work under the compulsory license provision of the Copyright Act after use or permission or knowing acquiescence by us in the use of the copyrighted work upon the parts of instruments serving to reproduce mechanically the work (viz: phonograph records) by another person, except that with respect to recordings manufactured by you:

1. The territory of this license is limited to the United States of America, its territories and possessions.
  - A. You agree, for all rights and privileges granted to you hereunder, to pay us for each record **manufactured and actually sold or otherwise distributed** by you or your licensee, serving to reproduce mechanically any portion of the copyrighted work, subject to the provisions set forth in Paragraph 11 hereof, at the full statutory rate (based upon timing) provided for in the Copyright Act in effect at the time of such sale or other distribution.
  - B. With regard to records manufactured and sold or distributed as “free” and “bonus” record through any mail order and/or club operation carried on by you or your subsidiaries, affiliates or licenses, no reductions in the rate specified in Paragraph 1.A will be allowed.
2. You shall render to us within sixty days, after June 30 and December 31 of each year hereafter, a written statement setting forth the amount of accrued royalties earned in the preceding three month period. You shall concurrently therewith remit and pay to us the amount of money to which we have become entitled during said period.
3. We, or our designated agents or representatives, shall have the right to examine your books and records, and those of your licensees and distributors, at reasonable times and upon reasonable notice in order to verify the accuracy thereof, and the statements based thereon.

Publishers in the U.S. can only grant rights for the U.S., as other countries have mechanical rights societies that collect royalties directly from the record companies or distributors.

The language here is unclear as to whether the quantity of records paid is on “manufactured and distributed” or “sold and not returned,” as the term “actually sold” would indicate the ability to credit returns.

Royalty rate set at the full statutory rate (based upon timing) in effect at the time of sale or distribution.

No reduction in royalties for free goods, which must be paid at the full rate.

Semi-annual accountings. Some agreements call for quarterly accountings.

Publisher shall have the right to audit the books of the record company for accuracy.

4. In the event you fail to fully and accurately account to us and pay royalties to us based thereon, we shall have the right to repudiate and revoke this agreement by giving you written notice to such effect. The effect of any such repudiation and revocation shall not relieve you of your obligation to account and pay royalties to us hereunder which have been earned through and including the date of such repudiation and revocation or which may be earned by reason of your exercise of any of the rights granted hereunder through and including the date of such repudiation and revocation.
5. This agreement covers and is limited to one particular recording of the copyrighted work as performed by the artist(s) and on the record described hereinabove. This agreement does not supersede nor in anyway affect any prior agreements now in effect respecting recordings of the copyrighted work.
6. This agreement shall not be assignable by you and any attempted or purported assignment by you shall be void and of no force or effect.
7. You need not serve or file the notices required by the Copyright Act.
8. You shall imprint the correct title, name(s) of writer(s), on the label of each and every single record, or in the case of LP-records, on the label or the back liner of the album cover, manufactured by you hereunder; in the event any of the foregoing is omitted or appears incorrectly on the records, you shall immediately correct any such errors and/or omissions upon notice of same.
9. Notwithstanding anything to the contrary contained in this agreement, no other licensor of musical compositions shall be accorded appropriate credit on any LP-record manufactured by you hereunder in any manner whatsoever which is more favorable than the manner in which appropriate credit is accorded to us. Moreover, no other licensor of musical compositions shall be dealt with by you in any respect whatsoever in a manner more favorable than the manner in which we are dealt with herein, including without limitation, the amount, manner of payment, and manner of accounting for payment, of royalties hereunder.
10. In the event more favorable terms are granted to any third party than are contained herein, this agreement shall be deemed amended to incorporate same as of the date when such higher rate is paid or such more favorable terms are granted to such third party and continuing for the duration of the period during which such higher rate is so paid or such more favorable terms are granted.

A failure to account, or a discrepancy in accounting, gives the publisher the right to terminate this license, subject to the record company still having the obligation to pay for any royalties earned as of the date of termination. Any distribution of records after the date of termination could be deemed an infringement of publisher's copyright, which typically has stronger penalties than just a breach of contract action.

See note above regarding one recording/one artist.

This agreement is with this particular record company and may not be assigned to another party.

As this is a negotiated license, notice to the Copyright Office is not needed.

Credit information for CDs. Usually for DPDs, this information is embedded in the digital file as "metadata" and viewable by various means.

A Most Favored Nations clause regarding credits.

A broader MFN clause regarding other elements, including royalty rates. This is often used when a reduced royalty is granted for compilations, charity CDs, and other reductions not required by a controlled compositions clause.

11. In connection with the manufacture, sale or other distribution by you of your licensees of records hereunder, you shall take all steps necessary to prevent any copyright held by us in and to the copyrighted work from being dedicated to the public domain. Notwithstanding the generality of the foregoing, if all or any part of the work, or any elements thereof, is reproduced in any written form, in connection with such manufacture, sale or other distribution, you shall place or require to be placed adjacent thereto the appropriate copyright notice in our name. You shall indemnify and hold us harmless of and from any and all loss, damage and expense, including attorney's fees and costs, arising from or in connection with your failure to comply with this provision.
12. The term "record" as used in this agreement shall be deemed to include all conventional type of phonograph records now in use, as well as compact discs, reel-to-reel tapes, audio-only cassettes, digital audio tape (DAT), eight-track recordings and digital phonorecord delivery (DPD). Said term does not, however, include sound motion pictures, audio-visual (video) cassettes, CD-ROM, CD-I or any other devices by which both picture and sound may be transmitted to the audience simultaneously.
13. You shall forward to us, free of charge, upon the first sale or other distribution of the work, five (5) copies of each record in each configuration manufactured by you hereunder. In addition, we may purchase promotional copies of records from you at the lowest promotional price charged by you to music publishers for promotional copies.
14. We may assign this agreement, any part thereof and any rights hereunder. You agree that you shall not pledge, hypothecate, mortgage or in any way encumber the license hereby granted. No modifications or extensions of this agreement shall be binding unless in writing and signed by the party sought to be bound.
15. This license is binding upon the successors, assigns, heirs and representatives of the parties hereto. This licensing agreement is made in the State of California, United States and its validity, construction and effect shall be governed by the laws thereof.
16. In the event that either party hereto files a suit in any way connected with this agreement, the unsuccessful party shall pay to the prevailing party attorney's fees and any and all costs incurred.

The definition of record, which includes all forms of audio "now in use" but specifically excludes all forms of audio-visual devices.

Often, publishers request copies of the recordings for their files and also to be able to pitch the songs for other uses.

Sets the jurisdiction for any court proceedings.

The possibility of having to pay the other party's attorneys fees can act as a deterrent to the filing of a lawsuit and encourage settlement of any claims.



17. It is understood by the parties that all the remedies provided for in the Copyright Act and otherwise provided by law shall be applicable to this agreement. Any such remedies set forth herein shall be in addition to such statutory or other remedies.

18. In the event that you manufacture a record hereunder, containing a new arrangement of the work, all right, title and interest therein, including such material and universal copyright therein, and extensions and renewal thereof, shall remain vested in and be deemed to be our sole and exclusive property.

Nothing contained in this agreement shall be construed to permit you to add lyrics to the work without prior written permission from us.

19. This license is effective upon the date specified hereinabove.

Very truly yours,

\_\_\_\_\_

By: \_\_\_\_\_

APPROVED AND ACCEPTED:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

See section in this book on copyright infringement and the possible remedies and penalties. It can be found in Chapter 1: Copyright Basics.

A new arrangement could be considered a derivative work, which requires the consent of the copyright holder. This language ensures that any new version is owned by the publisher and that the arranger cannot claim either partial ownership or a share of the royalties.

No new lyrics may be added to the song without the consent of the publisher.