

FrontCover

Handy Information About Copyright and Trademark Laws

A Handbook for Writers

by Holly Daigle



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CHAPTER 3 well-known_childrens_toy@childrenstoy.com

APPENDIX C our-trademarks@ourtrademark.com

APPENDIX E www.https://theauthorsimage.com

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Chapter 1: Copyright Laws

WHAT IS COPYRIGHT

The creator of an original expression in tangible form is the author, the **copy-right**¹ owner. Examples of tangible forms of expression are articles, paintings, photographs, illustrations, musical compositions, sound recordings, computer programs, books, poems, blog posts, movies, architectural works, and plays. The author is the owner as soon as they record the work. For example, if someone sketches with a crayon on the back of a paper menu, it is their record. Copyrighted work can be identified by writing the word copyright or using the copyright symbol, ©. It is not required to register work with the copyright office, but doing so would help the owner avoid a lawsuit.

COPYRIGHT INFRINGEMENT

Copyright infringement² is when an author uses a copyrighted work without permission from the copyright owner. The copyright law protects authors' works in a tangible form of expression. The protection provided by the copyright laws allows copyright owners to use their work in the following ways:

¹Legal protection for authors of their original work as soon as the work is expressed in tangible form.

²Using a copyrighted work is used without permission from the copyright owner is infringement.

reproduce, create derivatives, distribute copies, perform the visual and audio work publicly, display the work publicly, and authorize others to use the work.

COPYRIGHT NOTICE

The copyright notice has three essential parts: the word copyright or symbol ©, year, and author's name. The author is the owner as soon as they record the work. Be aware that ownership may also belong to a company and not the person who created it. Company-owned work is considered works made for hire, meaning the work belongs to the employer, not the employee. Other rules may apply for independent contractors. The copyright office has searchable records of the copyright owner's contact information.

EXPIRATION

Copyrights expire after the death of the owner plus seventy years. Works made for hire and anonymous works are copyright protected for the shorter 95 years from the publication or 120 years of the creation date.

FAIR USE

You can use other's work without permission if you follow **fair use**¹ rules. You can reproduce the work of others for purposes of criticism, comment, news reporting, teaching, scholarship, or research.

Four factors determine if a use is fair. The four factors are:

- purpose and character of the use (non-profit, education, transformative)

¹Legal principles that permit the use of copyrighted material.

- nature of the copyrighted work (creative work, factual, unpublished)
- amount and substantiality of the portion used (smaller amounts of copied material may be more likely fair, and even the smallest amount being the heart of the work may be unfair)
- effect of the use on the potential market or value (author loses sales because infringed content is available for free download)

Song lyrics have their own rules; pretty much steer clear as much as you can.

PUBLIC DOMAIN

Authors can use works in the **public domain**¹ without permission. Work published before 1926, has expired copyright, or had rights relinquished by the creator, is in the public domain. Most government works are in the public domain. Patents go public when the patent is granted to the inventor and are usually not protected by copyright law.

DERIVATIVE WORKS

A **derivative work**² is based on an existing work. The copyright covers additions, changes, or new material in the work. Examples of derivative works are a movie based on a book, revision of a published book, or drawing a photograph.

See Appendix A "Copyright Fair Use Cases" on page 19

¹Content that may be used without getting permission such as facts and discoveries, work with expired copyright, and works produced by the federal government are in the public domain.

²To derive or take from an existing work such as a movie based on a book.

Chapter 2: Creative Commons Licenses

WHAT IS CREATIVE COMMONS

Creative Commons¹ licenses enable copyright owners to give others some rights to their work. Copyright notices will change from *All Rights Reserved* to *Some Rights Reserved*.

SIX CREATIVE COMMONS LICENSES

There are six creative commons licenses that are free for copyright owners to use and apply to their works. The Creative Commons website will help select the type of license needed and embed a link to the description into the Creative Commons symbol. This is a link to the website: <https://creativecommons.org/choose/#>

- Attribution-Noncommercial-No Derivative Works (CC BY-NC-ND)
- Attribution-No Derivative Works (CC BY-ND)
- Attribution-Noncommercial (CC BY-NC), Attribution (CC BY)
- Attribution-Noncommercial-Share Alike (CC BY-NC-SA)

¹Copyright licenses are permissions that copyright owners use to allow others to use their work in certain ways.

- Attribution-Share Alike (CC BY-SA)

If the content owner wants to relinquish their rights or if copyright protection has expired, there is a creative commons symbol for work in the public domain.

ATTRIBUTION

When using work with a creative commons license, you must give attribution to the creator. The fundamental attribution will include the title, creator, source, and license. The creator may request a specific attribution, such as not to use their name.

Here is a link to an attribution generator: <https://l-izenzhinweisgenerator.de/?lang=en>.

See Appendix B "Creative Commons Symbols" on page 21

See Appendix C "Creative Commons Notice and Attribution Examples" on page 25

Chapter 3: Trademark Laws

WHAT IS A TRADEMARK

A **trademark**¹ is a symbol, word, or combination that differentiates a company from the rest.

TRADEMARK INFRINGEMENT

Trademark infringement² is the unauthorized use of a company's trademark. Unauthorized use means implying the association or endorsement by a company by using its trademark or use of a symbol, word, or combination that is either identical or so similar that a consumer could be confused, deceived, or misled.

TRADEMARK OWNER

Once a company starts using a trademark, it is theirs, and they can claim the trademark by using the TM symbol. There is additional protection for trade-

¹A trademark can be any word, phrase, symbol, design, or a combination of these things that identifies your goods or services.

²Trademark infringement is the unauthorized use of a trademark that is likely to cause confusion, deception, or mistake about the source of the goods and/or services.

marks once they are registered. A registered trademark uses the registration symbol, ®.

FAIR USE OF TRADEMARKS

Authors can use a company's trademark in work such as blogs and books if they follow fair use rules. There are two types of trademark fair use, nominative and descriptive (depending on where you research, you will find different terms explained differently, but the following will give you the gist of using trademarks).

For example, **nominative fair use**¹ refers to using another's trademark to describe or identify a product or service (a small engine repair shop's website states the owner has the capability of repairing brands X, Y, and Z). They cannot imply the endorsement, sponsorship, or affiliation with brands X, Y, and Z. They may use a disclaimer that says something to inform customers that they are not part of brands X, Y, and Z.

Authors can use trademarks to compare products, comical imitation, or in non-commercial documents like academic papers or media articles.

Descriptive fair use² is using a trademark for describing a product or service. Speedy's carwash cannot claim trademark infringement when a fast-food restaurant describes its service as speedy.

There are a few more things to be aware of when using trademarks. Trademark dilution is using a trademark in a way that weakens its famous quality

¹Reference to a trademark to identify a product or service that does not suggest sponsorship or endorsement by the trademark owner.

²The ability to use ordinary words to describe goods or services, even if those words happen to be part of someone's trademark.

(don't say pass me a brand K, say give me a tissue unless you mean brand name K). However, words like aspirin and thermos were once trademarked but now fall under general categories. Defamation is saying something is harmful or bad quality when it is not (brand name B's burgers are poisonous). Tarnishment is using a trademark in a way that would ruin a company's reputation (well-known_childrens_toy@childrenstoy.com that links to an adult website). There are other terms associated with trademark infringement, but they all point to not hurting someone else's business.

If using a trademark does not fall within fair use rules, then check **brand trademark guidelines**¹. At the bottom of most websites, there will be a link to the brand's trademark guidelines. The guide will explain how others can use a trademark or how to get permission.

NO GO LOGO

U.S. law forbids the use of government agency logos without written permission.

EXTRAS

Trademarks do not expire. The ™ and ® symbols only need to be used once at the beginning of a work.

See Appendix E "Trademark Infringement Cases" on page 29

¹A set of rules about how to use a company's trademarks, logos, and brand names.

Chapter 4: DIGITAL MILLENNIUM COPYRIGHT ACT

WHAT IS THE DIGITAL MILLENNIUM COPYRIGHT ACT

The **Digital Millennium Copyright Act**¹ ("DMCA")² of 1998 provides protections for **online service providers**³ (OSP) and copyright owners in the digital communication world. DMCA prohibits illegal circumvention of technological protection measures (like digital rights management, or "DRM").

DMCA REQUIREMENTS

For online service providers to be protected, they must meet the following requirements set by the DMCA.

When an OSP receives a notice of copyright infringement, they must:

¹Enables copyright owners to have infringing online content removed without the need for litigation and prohibits circumventing security software.

²You can read more about DMCA and its five titles on the copyright website.

<https://www.copyright.gov/legislation/dmca.pdf>

³A company that provides an online service such as websites, discussion forums, chat rooms, or webmail.

- adopt and implement policies to terminate the infringing material
- apply measures to identify and protect copyrighted work

Here is an example of the exchange between a copyright owner and OSP.

1. The copyright owner reports infringement by submitting a take-down notice to the OSP.
2. OSP removes access to the supposed infringement.
3. OSP attempts to notify the infringer of the takedown notice.
4. The infringer can submit a counter-notification, and the OSP informs the copyright owner.
5. The copyright owner has 14 days to file a lawsuit if they choose; otherwise, the OSP must restore the content.

DIGITAL RIGHTS MANAGEMENT

Digital rights management¹ (DRM) uses technology to prevent or restrict users from copyright infringement using various tools. DRM enables copyright owners to manage the copying, editing, saving, and sharing of their content.

¹Technology used to control and manage access to online copyrighted material.

Chapter 5: Patents and Trade Secrets

WHAT IS A PATENT

A **patent**¹ is the grant of a property right to an inventor. The grant of a patent is to inventors of a new process, machine, manufacture, ornamental design, and variety of plants. Inventors with a patent have the right to prohibit others from making, using, offering for sale, selling, or importing their invention. Patents are effective 20 years from the date of application.

PATENT COPYRIGHTS

A patent is published in the public domain when the inventor receives the grant. In the public domain, the patent's text and drawings are not protected by copyright law. However, an inventor can request copyright protection for specific descriptions, specifications, and drawings when they submit their application.

TYPES OF PATENTS

¹The right granted to an inventor by the federal government that permits the inventor to exclude others from making and selling their product.

There are three types of patents: utility, design & plant patents.¹

- Utility patents - Inventions are new and useful processes, machines, articles of manufacture, or compositions of matters, or any new useful improvement.
- Design patents - Inventions are new, original, and ornamental designs for an article of manufacture.
- Plant patents - inventions or discoveries and asexually reproduces any distinct and new variety of plant.

WHAT IS A TRADE SECRET

A **trade secret**² may be a design, formula, recipe, process, technique, codes, and other proprietary information.

TRADE SECRET LAW

The trade secret law is the protection of company information kept secret, giving them a competitive edge. There is no time limit for the protection of trade secrets. The trade secret law does not protect against someone independently discovering the same information or obtaining information by reverse engineering.

If you are privy to secret information through your employer, you may have a clearance or signed a non-disclosure agreement. Companies have procedures about how to handle secret information.

¹You can read more about patents on the United States Patents and Trademark Office website. <https://www.uspto.gov/patents/basics/patent-process-over-view#step3>

²Information that has economic value to a company that is not known by anyone outside of the company.

Chapter 6: Terms of Service

Terms of service¹ are rules laid out by service providers that users must agree to before using the service. The following are samples from various website's terms and conditions section.

Grant us a **non-exclusive license**²: a worldwide, transferable, and sub-licensable right to use, copy, modify, distribute, publish, and process information and content that you provide consistent with your privacy settings. If your privacy setting is public, a feature will enable other members to embed that public post and make the content accessible through search engines.

You are not allowed to:

- use any part of the service or content except as authorized by the copyright owners and us
- circumvent security features that prevent or restrict the use of content
- do anything unlawful, misleading, discriminatory, or fraudulent
- infringe or violate intellectual property rights

Please send us a notice to report content or conduct that you believe violates your rights. We respond to infringement notices according to our copyright protection process.

¹The set of rules companies require users to agree upon before doing business with them.

²This license gives the licensee the right to use the intellectual property but means that the licensor remains free to exploit the same intellectual property and to allow any number of other licensees.

Appendix A: Copyright Fair Use Cases

FAIR USE

Making copies of an old magazine page as part of a fund-raising effort is fair use because the magazine was already off the market, and it did not adversely affect sales of back issues.

The makers of a movie biography used 40 seconds from a famous person's film is fair use because it was a small portion for informational purposes.

A blog copied a few sentences from a newspaper article is fair use because they did not copy the valuable section of the article.

A 30-second parody that alters the original lyric line with a rhyming title and borrows six bars of the song is fair use because it was only 30 seconds. Famous humorous singers get permission to record their parodies.

NOT A FAIR USE

A trivia book about a famous TV series with questions about the characters and episodes that use actual dialog from the show is not fair use because it affected the owner's rights to profit from derivative works.

A news program copied one minute from a one-hour biography film to report a famous person's death is not fair use because it copied the *heart* of the film.

Downloading 30 songs using peer-to-peer file-sharing software to decide upon a later purchase is not fair use because songs samples are available without downloading.

Using a famous children's book to retell facts of a murder trial is not fair use because it was ridicule-like satire, not a comedy-like parody.

Appendix B: Creative Commons Symbols



CC BY: This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format, so long as cited attribution is to the original creator. The license allows for commercial use.

CC BY includes the following elements:

BY ⓘ – Requires credit to the creator.



CC BY-SA: This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format, so long as cited attribution is to the original creator. The license allows for commercial use. If you remix, adapt or build upon the material, you must license the modified material under identical terms.

CC BY-SA includes the following elements:

BY ⓘ – Requires credit to the creator.

SA Ⓞ – Requires adaptations be shared under the same terms.



CC BY-NC: This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format for non-commercial purposes only, and only so long as cited attribution is to the original creator.

CC BY-NC includes the following elements:

BY ⓘ – Requires credit to the creator.

NC Ⓞ – Only non-commercial uses of the work are permitted.



CC BY-NC-SA: This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format for non-commercial purposes only, and only so long as cited attribution is to the original creator. If you remix, adapt or build upon the material, you must license the modified material under identical terms.

CC BY-NC-SA includes the following elements:

BY ⓘ – Requires credit to the creator.


NC Ⓞ – Only non-commercial uses of the work are permitted.

SA Ⓞ – Requires adaptations be shared under the same terms.



CC BY-ND: This license allows reusers to copy and distribute the material in any medium or format in unadapted form only. As long as cited attribution is to the original creator, the license allows for commercial use.

CC BY-ND includes the following elements:


BY  – Requires credit to the creator.


ND  – No derivatives or adaptations of the work are permitted.



CC BY-NC-ND: This license allows reusers to copy and distribute the material in any medium or format in unadapted form only, for noncommercial purposes only, and only so long as cited attribution is to the original creator.

CC BY-NC-ND includes the following elements:

BY  – Requires credit to the creator.

NC  – Only non-commercial uses of the work are permitted.

ND  – No derivatives or adaptations of the work are permitted.



CC0 (aka CC Zero) is a public dedication tool, which allows creators to give up their copyright and put their works into the worldwide public domain.

CC0 will enable reusers to distribute, remix, adapt, and build upon the material in any medium or format, with no conditions.

Appendix C: Creative Commons Notice and Attribution Examples

CREATIVE COMMONS NOTICE

Creative Commons notice could appear in different ways.



- CC-BY-SA 4.0
- Creative Commons Attribution-Share Alike 4.0

CREATIVE COMMONS ATTRIBUTION

Creative Commons attribution could appear in different ways.

- Name of Image by The Author, , [www.https://theauthorsimage.com](https://theauthorsimage.com)
- Name of Article by The Author, CC-BY-SA 4.0 , [www.https://theauthorsimage.com](https://theauthorsimage.com)
- Name of Image by The Author, Creative Commons Attribution-Share Alike 4.0, [www.https://theauthorsimage.com](https://theauthorsimage.com)

If the work is a derivative, then the attribution may start with a statement that says so, this is a derivative of, or this work includes information from the name of content.

Appendix D: Example Brand Use Guidelines

The materials displayed on our websites, such as photographs, illustrations, artwork, names, logos, trademarks, and service marks, are the property of our company which has protection by intellectual property laws. Any such content may be displayed and printed for personal, non-commercial use. You agree not to reproduce, retransmit, distribute, disseminate, sell, publish, broadcast, or circulate any such material to anyone without our company's express prior written consent.

You may refer to our trademark in word form only to describe how your product or service relates to our product or service, so long as you follow these guidelines and make clear that we do not offer, sponsor or endorse your products and services.

Do not dilute our trademark by shortening, abbreviating, or otherwise altering our trademark and logo.

You may not register a domain name or create any social media account, user-name, page, group, or handle that incorporates our trademark that is likely to confuse the public about whether a website, page, or account is affiliated with or sponsored by us.

Authorized partners may use our trademark.

You need our written permission to use our logo. To request permission to use our logo, please e-mail our-trademarks@ourtrademark.com.

Appendix E: Trademark Infringement Cases

FAIR USE

Leathersmith Of London, Ltd. v. Alleyn

Leathersmith of London sued TANTALUS Custom Leathersmiths & Bookbinders. Alleyn's use of Leathersmith was fair use because he did not use the word Leathersmith as a trade or service mark. His use of Leathersmith was of good faith without intent to deceive or confuse customers. Leathersmith was used to describe the type of goods or service he provides.

NOT FAIR USE

Quality Inns Intl., Inc. v. McDonald's Corp.

Quality Inns wanted to open a new line of hotels called McSleep. The name McSleep is trademark infringement because Quality Inns wanted to capitalize on the goodwill and reputation of McDonald's and was considered unfair competition and dilution.

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Glossary

B

Brand trademark guidelines

A set of rules about how to use a company's trademarks, logos, and brand names.

C

Copyright

Legal protection for authors of their original work as soon as the work is expressed in tangible form.

Copyright infringement

Using a copyrighted work is used without permission from the copyright owner is infringement.

Creative Commons

Copyright licenses are permissions that copyright owners use to allow others to use their work in certain ways.

D

Derivative work

To derive or take from an existing work such as a movie based on a book.

Descriptive fair use

The ability to use ordinary words to describe goods or services, even if those words happen to be part of someone's trademark.

Digital Millennium Copyright Act

Enables copyright owners to have infringing online content removed without the need for litigation and prohibits circumventing security software.

Digital rights management

Technology used to control and manage access to online copyrighted material.

F

Fair use

Legal principles that permit the use of copyrighted material.

M

My Term

My definition

N

Nominative fair use

Reference to a trademark to identify a product or service that does not suggest sponsorship or endorsement by the trademark owner.

Non-exclusive license

This license gives the licensee the right to use the intellectual property but means that the licensor remains free to exploit the same intellectual property and to allow any number of other licensees.

O

Online service providers

A company that provides an online service such as websites, discussion forums, chat rooms, or webmail.

P

Patent

The right granted to an inventor by the federal government that permits the inventor to exclude others from making and selling their product.

Public domain

Content that may be used without getting permission such as facts and discoveries, work with expired copyright, and works produced by the federal government are in the public domain.

T

Terms of service

The set of rules companies require users to agree upon before doing business with them.

Trade secret

Information that has economic value to a company that is not known by anyone outside of the company.

Trademark

A trademark can be any word, phrase, symbol, design, or a combination of these things that identifies your goods or services.

Trademark infringement

Trademark infringement is the unauthorized use of a trademark that is likely to cause confusion, deception, or mistake about the source of the goods and/or services.

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BackCover

- © Can I use an image protected by creative commons in my written work?
- © Can I use a trademark in my newsletter?
- © What is fair use?

Content creators need to consider the legal aspect of using someone else's work. How do we know when it's okay to use an image, a line from a song, a quote, research findings, or a trademark? If we decide to use content that is not our own, how do we get permission? Where do we find who to ask? Do we have to give credit to the original author? This handbook covers many areas of concern for writers. It can answer one quick question or use it as a checklist for each project. If you want to dig deeper into a specific topic, you'll find resources to get you started.



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