

## Works In Progress - La.

October 2016

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## FBI WARNING



**Warning:** The unauthorized reproduction or distribution of this copyrighted work is illegal. Criminal copyright infringement, including infringement without monetary gain, is investigated by the FBI and is punishable by up to 5 years in federal prison and a fine of \$250,000.

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## Who is this Mark J. Davis guy ?

- I've practiced music and copyright law since 1985. I was an Arbitrator for the Copyright Office, and I've filed out every copyright form there is.
- I've written textbooks, taught college and graduate courses on copyright and legal issues in the music industry for over dozen years.
- I want to make sure that creators (like you) understand copyright and obtain the maximum protection the law allows for their creative effort.

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Western civilization is built upon the free transmission of ideas.

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OPTIMUS INFORMATIO ES  
VULGARIS SUBSTANTIA  
– SENECA

*The best ideas are common property.*

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*Why Copyright?*

To encourage authors by  
granting them  
a **monopoly** on the  
expression of their ideas.

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*U.S. Constitution*

Congress shall have 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.

Article I, Section 8

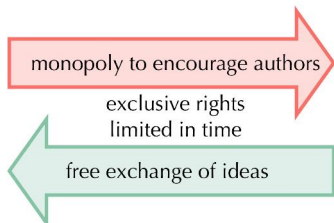
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*Balance*

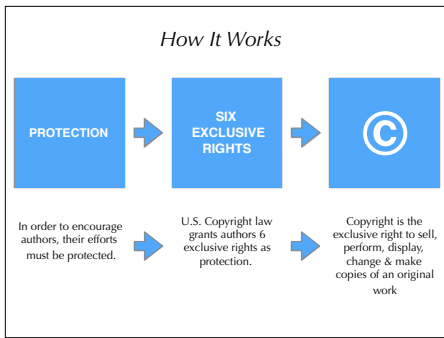


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*What is Copyright?*

Six exclusive rights granted to the author/owner by Title 17 of the U.S. Code

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- The 6 Copy-Rights*
- Reproduce the work
  - Make derivatives
  - Distribute and sell copies
  - Public performance
  - Public display
  - Public performance by digital audio transmission (for sound recordings only)

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*§106 Exclusive Rights*

- 1 To **reproduce** the work
- 2 To prepare **derivative** works
- 3 To **distribute & sell** copies
- 4 Public **performance**
- 5 Public **display**
- 6 **Digital audio** transmission (sound recordings only)

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### A Copyright isn't a Trademark

- Prevents consumer confusion.
- The trademark Coca-Cola® assures the public that a soft drink can contains Coke®, not Pepsi® or Seven-Up®, even though you can't see inside the can.
- A *service mark* is the equivalent for intangibles



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### A Copyright isn't a Patent



- A U.S. patent gives exclusive rights for 20 years for an invention, discovery or process.
- A patent excludes others from making, using, offering, importing or selling the invention in the U.S.
- In exchange for these rights, the invention is publicly disclosed.

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### Trade Secrets

If you can't protect it under trademark, patent or copyright...

How do you protect it?

*(Keep it secret.)*



What are the 11 herbs & spices? Only the Colonel knows.

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SO...

If it's not a trademark, service mark, patent or trade secret...

What does copyright protect?

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### Copyright Protection

Copyright protection covers more than one would expect.

Any **original** work of an Author's **expression**, which has been fixed in a **tangible** form, is protected under the Copyright Act.

Although the Act lists the types of works it shields, it is not an exclusive list.

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### §102 Copyrightable Works

- Literary works; 
- Musical works, including accompanying words; 
- Dramatic works, including accompanying music; 
- Pantomimes and choreographic works; 
- Pictorial, graphic and sculptural works; 
- Motion pictures and other audiovisual works; 
- Sound recordings; 
- Architectural works.

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### Copyright in Music



© indicates that the sheet music is protected



Ⓟ indicates that the sound recording embodied in a phonorecord is protected

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### Four Roles in the Music Business



PUBLISHING SIDE

Songwriter

Music Publisher



LABEL SIDE

Recording Artist

Record Label

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### Not Copyrightable

#### IDEAS



**Ideas are not protected by copyright.**

Copyright covers the expression of ideas, not the ideas themselves.

There's no protection until you write the book.

#### FACTS



**Facts are not protected by copyright.**

Einstein could not copyright the formula  $E=mc^2$ .

But he could get copyright protection for a book explaining his discovery and illustrating the principles of relativity.

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### No Copyright



**NO COPYRIGHT !**

- Titles of songs & books
- Familiar Symbols
- Short Phrases
- Names
- Colors
- Lists of Ingredients
- Forms & calendars

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### Unoriginal & Common Things

**Unoriginal and common things** are not protected by copyright.

There are over 10,000 copyrighted songs with the title **"I Love You."**



*Music and lyrics are protected, but titles are not.*

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### No Copyright for U.S. Government Works



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### Copyright Doesn't Cover

**Intangibles** and **unfixed works** are not protected by copyright.

If the work hasn't been fixed in a tangible form (written down, taped, recorded, or burned to a CD-ROM), then it is not subject to protection.



*Improv comedy, live jazz solos, and dance routines are not copyrightable until they have been captured on tape or transcribed.*

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### Tangible Form



A work is "**fixed in tangible form**" when the ink is dry on the paper, or the performance is recorded on tape, a computer file is saved or a CD-ROM is burned.

Publication and registration is not necessary for copyright.

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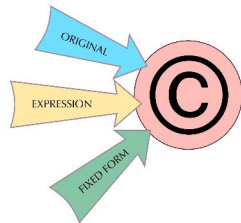
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### When does Copyright start?

Copyright protection subsists in original works of authorship fixed in a tangible medium of expression. (17 USC §102)



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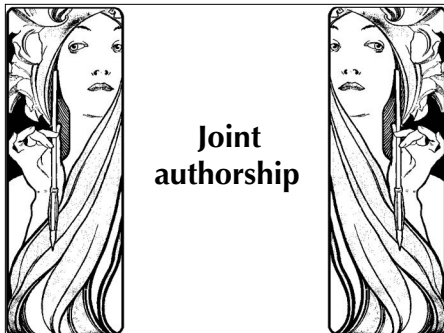
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*Joint Authorship*

§101 A “**joint work**” is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

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*Joint Authorship*

Each joint author must contribute separately copyrightable material to the final result.

Before each independent part is merged into the whole, it must still meet the tests of copyrightability.

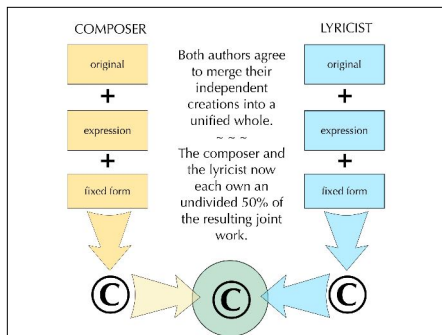
Original   Expression   Fixed

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*Work-for-hire*

§101 A “**work made for hire**” is –

- (1) a work prepared by an employee within the scope of his or her employment
- (2) a work specially ordered or commissioned in a written instrument signed by both parties prior to creation of the work.

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### Work-for-hire

#### Employee or Contractor?

Both employees and independent contractors receive payment for work performed for the benefit of others. By itself, payment to a person does not make that person an employee. It matters because ownership & duration of protection are different for works-for-hire.

- Was the payment made to create a copyrightable work?
- Was the job performed during work hours?
- Was the job performed at the workplace?
- Was the copyrightable work specifically created to benefit the employer?



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### Work-for-hire

#### In a work-for-hire:

The **employer** not the author owns the copyright and therefore the exclusive §106 rights.

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### Duration of copyright protection

U.S. Constitution Article 1, Section 8



*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.*

*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.*

exclusive rights for authors, but limited in time

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*Duration – Single Author*

If the work was created **after January 1, 1978**, then the copyright lasts for the **life of the author plus 70 years**



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*Duration – Multiple Authors*



If two or more authors contributed, the copyright lasts the...  
**life of the last surviving Joint Author plus 70 years.**

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*Duration – Work-for-hire*



If it is a work-for-hire, (created by an employee or contractor), then the copyright is owned by the **employer** for

- 95 years after publication **OR**
- 120 years after creation **whichever is shorter**

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*Duration – Anonymous Authors*



Duration for **anonymous** and **pseudonymous** works, is calculated the same way as a work-for-hire, unless the author's identity is revealed.

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**Speaking of limited times –  
I need a break -  
How about you?**

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*§ 106 Exclusive Rights*

- 1 To **reproduce** the work 
- 2 To prepare **derivative** works 
- 3 To **distribute & sell** copies 
- 4 Public **performance** 
- 5 Public **display** 
- 6 **Digital audio** transmission  
(sound recordings only ©) 

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*Limitations on Exclusive Rights*

- §107 Fair Use
- §108 Reproduction by Libraries & Archives
- §110 The TEACH Act of 2002
- §300 Public Domain

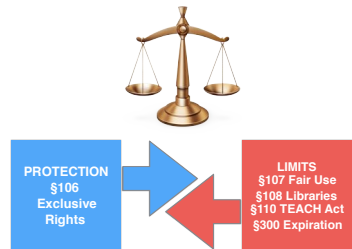
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*Protection versus Limitation*



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§300: Public Domain

Works in the **Public Domain** are free for anyone to use or modify.

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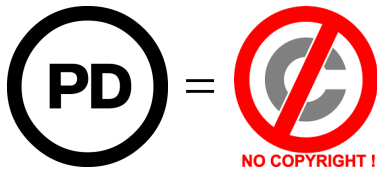
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Public Domain means No Copyright



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What's in the Public Domain?

- Copyright **expired**
- Copyright **abandoned** by author/owner
- US publication before 3/1/1989 **without © notice**
- US publication before **1964** & its **copyright was not renewed**

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*Public Domain*

All works published in the U.S.  
before **January 1, 1923**  
are in the public domain.



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**Registration**



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*Registration*



Copyright filings in 1897, waiting to be sorted & classified.

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*File on paper*

**Alternate Registration Method**

**Registration with Paper Forms**

The fee for a basic registration using one of these forms is \$65 payable by check or money order. Form CDN (Continuation sheet for applications) is also still available on paper. Paper forms are also available by postal mail upon request. See below for Group Registrations.

**Literary**

- Form TX
- Short Form TX

**Visual Arts**

- Form VA
- Short Form VA

**Performing Arts**

- Form PA
- Short Form PA

**Sound Recordings**

- Form SR

**Single Serials**

- Form SE
- Short Form SE

**Continuation Sheet**

- Form CDN – Continuation Sheet used in conjunction with forms above when more space is necessary.

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## File online

### U.S. Copyright Office Forms

#### Primary Registration Method

##### Registration with Electronic Copyright Office (eCO)

To file a claim to copyright in your work, we recommend you use the Copyright Office online system.

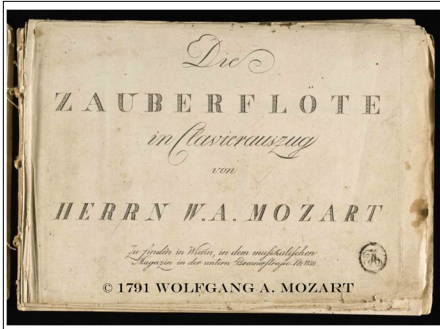
**Before using the service, we recommend you first read eCO Acceptable File Types, eCO Tips, eCO FAQs, or eCO Tutorial (PowerPoint) eCO Tutorial (PDF).**

#### Advantages include:

- Lower filing fee of \$35 for a basic claim (for online filings only)
- Fastest processing time
- Online status tracking
- Secure payment by credit or debit card, electronic check, or Copyright Office deposit account
- The ability to upload certain categories of deposits directly into eCO as electronic files

**Processing Time:** The time the Copyright Office requires to process an application varies, depending on the number of applications the Office is receiving and clearing at the time of submission and the extent of questions associated with the application. **Current Processing Times**

Login to eCO:  Electronic Copyright Office



## Why spend the money to register if ...

Copyright protection starts the moment an original expression of an author is put into fixed form, **and...** the copyright in the work immediately becomes the property of the author who created the work, **and...**

only the author or those deriving their rights through the author can rightfully claim copyright?



## 6 Reasons to Register

- ✓ Registrations are public records identifying the copyright claimant;
- ✓ Registration is necessary before an infringement suit can be filed in court;
- ✓ Registration is prima facie evidence in court of a claim to ownership;
- ✓ If registration is made within 3 months after publication or before an infringement, the claimant may ask for statutory damages and attorney's fees;
- ✓ Registration is necessary to obtain compulsory royalties; and
- ✓ Registration protects against the importation of infringing copies of the work.

### Poor Man's Copyright

- Obtaining copyright protection by mailing your work to yourself and not opening the envelope is an **urban myth**.
- Although it may have a postmark showing the date of mailing, it is **not a substitute for registration** and has **no legal benefits**.
- It's **still necessary to file** for registration of your claim before a lawsuit.
- The postmarked envelope is **not a public record**.
- The postmarked envelope is **not proof in court**.
- If you rely on the "poor man's" copyright – you'll remain a **poor man!**



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## Infringement

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### Types of Infringement



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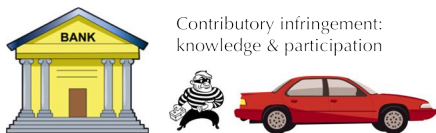
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### Types of Infringement



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### Types of Infringement

Inducement to infringe:  
encouragement & distribution of the tool



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### Proving Infringement

1. Ownership of a valid copyright in the work
2. Unauthorized use or copying
3. Access by the infringer to the original work
4. Substantial similarity

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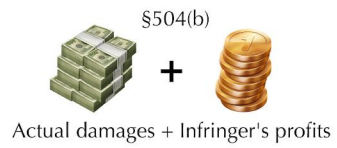
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### Infringement Damages



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### \$504(c) Statutory Damages



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*§504 Infringement*

If an infringement was **willful**,  
the infringer may have to pay the  
copyright owner up to  
**\$150,000**

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*§504 Infringement Damages*



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*Limitations on Exclusive Rights*

**§107 Fair Use**

§108 Reproduction by Libraries & Archives

§110 The TEACH Act of 2002

§300 Public Domain

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*What Is Fair Use?*



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*\$107 Fair Use*

**Ain't What You Think It Is**

*If you guess wrong . . .*

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***\$150,000***

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Three common  
attitudes about  
***Fair Use***

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*Arrrrrrgh !  
I'll take what I want.*

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They'll find out I did it.  
They know where I am.  
They'll catch me.

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Schultz! That's not Fair Use,  
it's willful copyright  
infringement!



I know nothing – nothing!

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Fair Use is *not a right* -  
it's an *excuse*.

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AFTER YOU HAVE BEEN  
**SUED FOR \$150,000**  
FOR WILLFUL COPYRIGHT  
INFRINGEMENT

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*4 Fair Use Factors:*

1. Purpose and character of use
2. Nature of the original work
3. Amount taken from the original
4. Effect on market for original

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**Questions?**

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*For more copyright information,  
please visit us at:*

**[www.buzzgig.com](http://www.buzzgig.com)**

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*Links*

Copyright office <http://www.copyright.gov>  
Law <http://www.copyright.gov/title17/>  
Online registration <http://www.copyright.gov/eco/>  
Paper forms <http://www.copyright.gov/forms/>  
Fact Sheets <http://www.copyright.gov/circs/factsheet.html>  
Circulars <http://www.copyright.gov/circs/>  
Fair Use Index <http://www.copyright.gov/fair-use/>  
  
Fair Use <http://fairuse.stanford.edu>  
  
Creative Commons <https://creativecommons.org>  
  
US Patent & Trademark Office <http://www.uspto.gov>  
Louisiana Trademark Office <http://www.sos.la.gov/>  
  
BuzzGig <http://www.buzzgig.com/index.html>

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