

Copyright Notice

Introduction

The use of a copyright notice is no longer required under U.S. law, although it is often beneficial. Because prior law did contain such a requirement, however, the use of notice is still relevant to the copyright status of older works.

This circular discusses both the copyright notice provisions as originally enacted in the 1976 Copyright Act (title 17, *U.S. Code*), which took effect January 1, 1978, and the effect of the 1988 Berne Convention Implementation Act, which amended the copyright law to make the use of a copyright notice optional on copies of *works published on and after March 1, 1989*. Specifications for the proper form and placement of the notice are described in this circular.

Works published before January 1, 1978, are governed by the previous copyright law. Under that law, if a work was published under the copyright owner's authority without a proper notice of copyright, all copyright protection for that work was permanently lost in the United States.

The Uruguay Round Agreements Act of 1994 (URAA)

P.L. 103-465 modified the effect of publication without notice for certain foreign works. Under this act, copyright is automatically restored, effective January 1, 1996, for certain foreign works placed into the public domain because of lack of proper notice or noncompliance with other legal requirements. Although restoration is automatic, if the copyright owner wishes to enforce rights against reliance parties (those who, relying on the public domain status of a work, were already using the work before the URAA was enacted), he or she must either file with the Copyright Office a Notice of Intent to Enforce the restored copyright or serve such a notice on the reliance party.

For more information about the copyright notice under the law in effect before January 1, 1978, see 37 *CFR* 202.2, "Copyright Notice" on the Copyright Office website at www.copyright.gov/title37. For more information about restoration of copyright under the URAA, read Circular 38B, *Highlights of Copyright Amendments Contained in the Uruguay Round Agreements Act (URAA)*.

Use of the Copyright Notice

Copyright is a form of protection provided by the laws of the United States to authors of "original works of authorship." When a work is published under the authority of the copyright owner (see definition of "publication" below), a notice of copyright may be placed on all publicly distributed copies or phonorecords. The use of the notice is the responsibility of the copyright owner and does not require permission from, or registration with, the Copyright Office.

Use of the notice may be important because it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication. Furthermore, in the event that a work is infringed, if the work carries a proper notice, the court will not *give any weight to a defendant's interposition of an innocent infringement defense*—that is, that he or she did not realize that the work was protected. An innocent infringement *defense* may result in a reduction in damages that the copyright owner would otherwise receive.

For works first published on and after March 1, 1989, use of the copyright notice is optional. Before March 1, 1989, the use of the notice was mandatory on all published works. Omitting the notice on any work first published before that date could result in the loss of copyright protection if corrective steps are not taken within a certain amount of time. The curative steps are described in this circular under “Omission of Notice and Errors in Notice.”

The Copyright Office does not take a position on whether reprints of works first published with notice before March 1, 1989, which are distributed on or after March 1, 1989, must bear the copyright notice.

What Is Publication?

The 1976 Copyright Act defines publication as “the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending.” An offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display also constitutes publication.

The following do not constitute publication: printing or other reproduction of copies, performing or displaying a work publicly, or sending copies to the Copyright Office.

Copyright Notice Not Required on Unpublished Works

The copyright notice has never been required on unpublished works. However, because the dividing line between a preliminary distribution and actual publication is sometimes difficult to determine, the copyright owner may wish to place a copyright notice on copies or phonorecords that leave his or her control to indicate that rights are claimed. An appropriate notice for an unpublished work might be: *Unpublished work © 2007 John Doe*

Form of Notice

The form of the copyright notice used for “visually perceptible” copies—that is, those that can be seen or read, either directly (such as books) or with the aid of a machine (such as

films)—is different from the form used for phonorecords of sound recordings (such as compact discs or cassettes).

Visually Perceptible Copies

The notice for visually perceptible copies should contain three elements. They should appear together or in close proximity on the copies. The elements are:

- 1 *The symbol* © (the letter C in a circle), or the word “Copyright,” or the abbreviation “Copr.”; and
- 2 *The year of first publication.* If the work is a derivative work or a compilation incorporating previously published material, the year date of first publication of the derivative work or compilation is sufficient. Examples of derivative works are translations or dramatizations; an example of a compilation is an anthology.
The year may be omitted when a pictorial, graphic, or sculptural work, with accompanying textual matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or useful articles; and
- 3 *The name of the owner of copyright in the work*, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.*

Example: © 2007 Jane Doe

*The United States is a member of the Universal Copyright Convention (the UCC), which came into force on September 16, 1955. To guarantee protection for a copyrighted work in all UCC member countries, the notice must consist of the symbol © (the word “Copyright” or the abbreviation is *not* acceptable), the year of first publication, and the name of the copyright proprietor. *Example:* © 2007 John Doe. For information about international copyright relationships, read Circular 38A, *International Copyright Relations of the United States*.

The “C in a circle” notice is used only on “visually perceptible” copies. Certain kinds of works, for example, musical, dramatic, and literary works, may be fixed not in “copies” but by means of sound in an audio recording. Since audio recordings such as audio tapes and phonograph disks are “phonorecords” and not “copies,” the “C in a circle” notice is not used to indicate protection of the underlying musical, dramatic, or literary work that is recorded.

Phonorecords of Sound Recordings

The copyright notice for phonorecords embodying a sound recording is different from that for other works. Sound recordings are defined as “works that result from the fixation of a series of musical, spoken or other sounds, but not including the sounds accompanying a motion picture or other audio-

visual work.” Copyright in a sound recording protects the particular series of sounds fixed in the recording against unauthorized reproduction, revision, and distribution. This copyright is distinct from the copyright of the musical, literary, or dramatic work that may be recorded on the phonorecord.

Phonorecords may be records (such as LPs and 45s), audio tapes, cassettes, or discs. The notice should contain the following three elements appearing together on the phonorecord:

- 1 *The symbol* © (the letter P in a circle); and
- 2 *The year of first publication* of the sound recording; and
- 3 *The name of the owner of copyright* in the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner. If the producer of the sound recording is named on the phonorecord label or container and if no other name appears in conjunction with the notice, the producer’s name shall be considered a part of the notice.

Example: © 2007 X.Y.Z. Records, Inc.

Contributions to Collective Works

A “collective work” is one in which a number of contributions that are separate and independent works in themselves are assembled into a collective whole. Examples of collective works include periodicals (such as magazines and journals), encyclopedias, and anthologies.

A single copyright notice applicable to the collective work as a whole serves to indicate protection for all the contributions in the collective work, except for advertisements, regardless of the ownership of copyright in the individual contributions and whether they have been published previously.

However, a separate contribution to a collective work *may* bear its own notice of copyright, and in some cases it may be advantageous to utilize the separate notice. As a practical matter, a separate notice will inform the public of the identity of the owner of the contribution. For works first published before March 1, 1989, there may be additional reasons to use a separate notice. If the owner of the collective work is not the same as the owner of an individual contribution that does not bear its own notice, the contribution is considered to bear an erroneous notice. (For the effects of a notice with the wrong name, see “Error in Name” on page 5 of this circular.) Additionally, if an individual author of contributions to a periodical wishes to make a single registration for a group of contributions published within a 12-month period, each contribution must carry its own notice. For information on

this type of registration, request Form GR/CP and Information Package 104.

A notice for the collective work will not serve as the notice for advertisements inserted on behalf of persons other than the copyright owner of the collective work. These advertisements should each bear a separate notice in the name of the copyright owner of the advertisement.

Publications Incorporating U.S. Government Works

Works by the U.S. government are not eligible for copyright protection. For works published on and after March 1, 1989, the previous notice requirement for works consisting primarily of one or more U.S. government works has been eliminated. However, use of a notice on such a work will defeat a claim of innocent infringement as previously described *provided* the notice also includes a statement that identifies either those portions of the work in which copyright is claimed or those portions that constitute U.S. government material. An example is: “© 2007 Ann Doe. Copyright claimed in Chapters 7–10, exclusive of U.S. government maps.”

Copies of works published before March 1, 1989, that consist primarily of one or more works of the U.S. government should have a notice and the identifying statement.

Position of Notice

The copyright notice should be placed on copies or phonorecords in such a way that it gives reasonable notice of the claim of copyright. The notice should be permanently legible to an ordinary user of the work under normal conditions of use and should not be concealed from view upon reasonable examination.

The Copyright Office has issued regulations, summarized below, concerning the position of the notice and methods of affixation (37 *CFR* 201.20). To read the complete regulations, see “Methods of Affixation and Positions of the Copyright Notice on Various Types of Works” at www.copyright.gov/title37, or consult the *Code of Federal Regulations* in your local library.

The following locations and methods of affixation are examples of appropriate position of notice. These examples are not exhaustive.

Works Published in Book Form

- Title page
- Page immediately following the title page

- Either side of the front or back cover
- First or last page of the main body of the work

Single-leaf Works

- Front or back

Works Published as Periodicals or Other Serials

- Any location acceptable for books
- As part of, or adjacent to, the masthead or on the page containing the masthead
- Adjacent to a prominent heading, appearing at or near the front of the issue, containing the title of the periodical and any combination of the volume and issue number and date of the issue

Works Published as Separate Contributions to Collective Works

For a separate contribution reproduced on only one page:

- Under the title or elsewhere on the same page

For a separate contribution reproduced on more than one page:

- Under a title appearing at or near the beginning of the contribution
- On the first page of the main body of the contribution
- Immediately following the end of the contribution
- On any of the pages where the contribution appears if the contribution consists of no more than 20 pages, the notice is reproduced prominently, and the application of the notice to the particular contribution is clear

Works Reproduced in Machine-Readable Copies

- With or near the title or at the end of the work, on visually perceptible printouts
- At the user's terminal at sign-on
- On continuous display on the terminal
- Reproduced durably on a gummed or other label securely affixed to the copies or to a container used as a permanent receptacle for the copies

Motion Pictures and Other Audiovisual Works

A notice embodied in the copies by a photomechanical or electronic process so that it ordinarily would appear whenever the work is performed in its entirety may be located:

- With or near the title
- With the cast, credits, and similar information

- At or immediately following the beginning of the work
- At or immediately preceding the end of the work

The notice on works lasting 60 seconds or less, such as untitled motion pictures or other audiovisual works, may be located:

- In all the locations specified above for longer motion pictures, and
- If the notice is embodied electronically or photo-mechanically, on the leader of the film or tape immediately preceding the work

For audiovisual works or motion pictures distributed to the public for private use, the locations include the above, and in addition:

- On the permanent housing or container

Pictorial, Graphic, and Sculptural Works

For works embodied in two-dimensional copies, a notice may be affixed directly, durably, and permanently to:

- The front or back of the copies
- Any backing, mounting, framing, or other material to which the copies are durably attached, so as to withstand normal use

For works reproduced in three-dimensional copies, a notice may be affixed directly, durably, and permanently to:

- Any visible portion of the work
- Any base, mounting, or framing or other material on which the copies are durably attached

For works on which it is impractical to affix a notice to the copies directly or by means of a durable label, a notice is acceptable if it appears on a tag or durable label attached to the copy so that it will remain with it as it passes through commerce.

For works reproduced in copies consisting of sheet-like or strip material bearing multiple or continuous reproductions of the work, such as fabrics or wallpaper, the notice may be applied:

- To the reproduction itself
- To the margin, selvage, or reverse side of the material at frequent and regular intervals
- If the material contains neither a selvage nor reverse side, to tags or labels attached to the copies and to any spools, reels, or containers housing them in such a way that the notice is visible in commerce

Omission of Notice and Errors in Notice

The 1976 Copyright Act attempted to ameliorate the strict consequences of failure to include notice under prior law. It contained provisions that set out specific corrective steps to cure omissions or errors in notice. Under these provisions, an applicant had five years after publication to cure omission of notice or certain errors. Although these provisions are technically still in the law, their impact has been limited by the Berne amendment making notice optional for all works published on and after March 1, 1989. There may still be instances, such as the defense of innocent infringement, where the question of proper notice may be a factor in assessing damages in infringement actions.

Omission of Notice

“Omission of notice” is publishing without a notice. In addition, some errors are considered the same as omission of notice. These are:

- A notice that does not contain the symbol © (the letter C in a circle), or the word “Copyright” or the abbreviation “Copr.” or, if the work is a sound recording, the symbol Ⓗ (the letter P in a circle)
- A notice dated more than one year later than the date of first publication
- A notice without a name or date that could reasonably be considered part of the notice
- A notice that lacks the statement required for works consisting preponderantly of U.S. government material
- A notice located so that it does not give reasonable notice of the claim of copyright

The omission of notice does not affect copyright protection, and no corrective steps are required if the work was published on or after March 1, 1989. For works published between January 1, 1978, but before March 1, 1989, no corrective steps are required if:

- The notice is omitted from no more than a relatively small number of copies or phonorecords distributed to the public; or
- The omission violated an express written requirement that the published copies or phonorecords bear the prescribed notice.

In all other cases of omission in works published before March 1, 1989, to preserve copyright:

- The work must have been registered before it was published in any form or before the omission occurred, or it

must have been registered within five years after the date of publication without notice; *and*

- The copyright owner must have made a reasonable effort to add the notice to all copies or phonorecords that were distributed to the public in the United States after the omission was discovered.

If these corrective steps were not taken, the work went into the public domain in the United States five years after publication. At that time all U.S. copyright protection was lost and cannot be restored.

Error in Year

If the copyright duration depends on the date of first publication and the year given in the notice is earlier than the actual publication date, protection may be shortened by beginning the term on the date in the notice. (For a later date in the notice, see “Omission of Notice” above.)

Example: A work made for hire is created in 1983 and is first published in 1988. However, the notice contains the earlier year of 1987. In this case, the term of copyright protection would be measured from the year in the notice, and the expiration date would be 2082, 95 years from 1987.

Error in Name

When the person named in the notice is not the owner of copyright, the error may be corrected by:

- Registering the work in the name of the true owner; *or*
- Recording a document in the Copyright Office executed by the person named in the notice that shows the correct ownership.

Otherwise, anyone who innocently infringes the copyright and can prove that he or she was misled by the notice and obtained a transfer or license from the person named in the notice may have a complete defense against the infringement.

Mandatory Deposit

All works under copyright protection and published in the United States on or after March 1, 1989, are subject to mandatory deposit whether published with or without a notice.

Works first published *before* March 1, 1989, are subject to mandatory deposit if they were published in the United States with notice of copyright. In general, within three months of publication in the United States, the owner of copyright or of the exclusive right of publication must deposit two copies (or, in the case of sound recordings, two

phonorecords) of the work in the Copyright Office for the use or disposition of the Library of Congress.

The Copyright Office has issued regulations exempting certain categories of works entirely from the mandatory deposit requirements and reducing the obligation for other categories. If copyright registration is sought, the same deposit may be used for the mandatory deposit and for registration. For further information about mandatory deposit, read Circular 7D, *Mandatory Deposit of Copies or Phonorecords for the Library of Congress*.

For Further Information

By Internet

Circulars, announcements, regulations, other related materials, and all copyright application forms are available from the Copyright Office website at www.copyright.gov.

By Telephone

For general information about copyright, call the Copyright Public Information Office at (202) 707-3000. Staff members are on duty from 8:30 a.m. to 5:00 p.m., eastern time, Monday through Friday, except federal holidays. Recorded information is available 24 hours a day. Or, if you know which application forms and information circulars you want, you can request them 24 hours a day from the Forms and Publications Hotline at (202) 707-9100. Leave a recorded message.

By Regular Mail

Write to:

*Library of Congress
Copyright Office-COPUBS
Publications Section
101 Independence Avenue SE
Washington, DC 20559-6304*