



PROCUREMENT AND ENFORCEMENT
OF INTELLECTUAL PROPERTY

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Attorneys at Law

PATENT, TRADEMARK
COPYRIGHT & RELATED MATTERS

C&T Staff Training
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COPYRIGHTS

The Constitution of the United
States of America

Article 1, Section 8, Clause 8



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.

Copyright law protects original works of authorship fixed in a tangible medium. Almost everything that is an expression of an idea is automatically copyrighted upon creation even if the work is unfinished, unpublished, not marked with a © notice, and unregistered.

There are two (2) basic requirements for copyright protection:

- 1) The work must be an original expression; and
- 2) The work must be fixed in a tangible medium.

What kinds of works can be copyrighted?



What cannot be copyrighted?

- Ideas
- Information already in the public domain
- Works made by the federal government
- Laws (including court decisions, statutes, cases, regulations, and constitutions)
- Short phrases and titles
- Blank forms and works designed for recording information
- Fonts and familiar symbols
- Domain names
- Mechanical or utilitarian parts (useful objects)

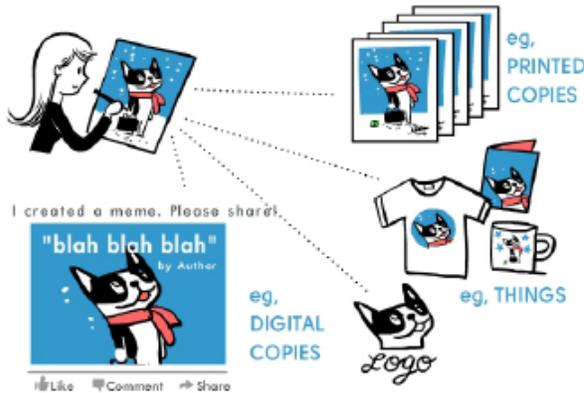
Who owns a Copyright?

The person who created the “work” is called the author. Copyright law recognizes three kinds of authorship:

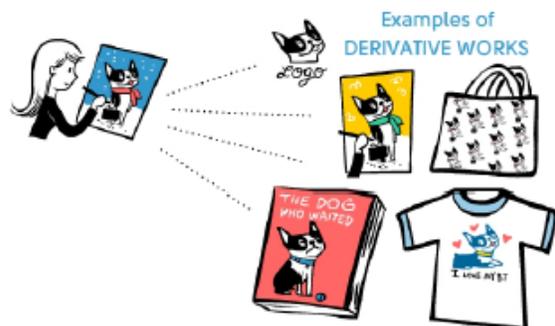
- 1) sole authorship,
- 2) joint authorship, and
- 3) employer authorship via works made for hire.

What rights does the owner of a copyright have?

The OWNER has the exclusive right to **reproduce** all or parts of the work.

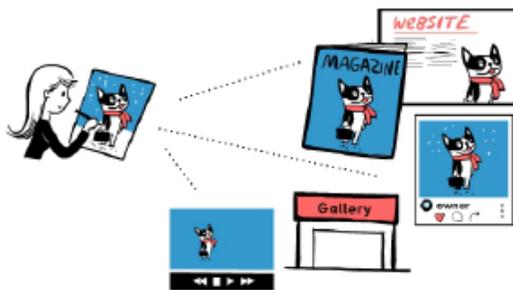


The OWNER has the exclusive right to **make new or "derivative works"** - modifications, adaptations, translations etc.- based on this work.



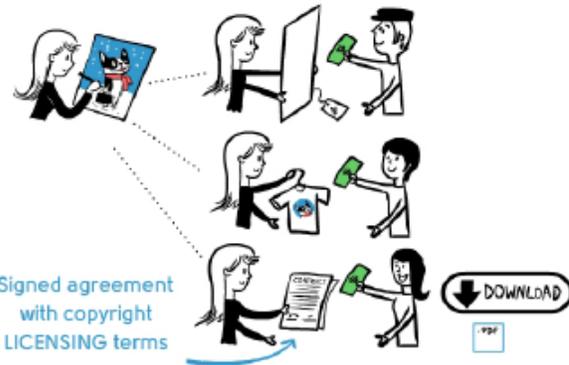
Modifying artwork without permission or licence from the Copyright Owner is Copyright Infringement.

The OWNER has the exclusive right to **control the public* display or performance** of the work.



*PUBLIC = audience that is wider than close friends & family. On social media networks, even though you have signed up to enable and permit SHARING, you are still the Copyright Owner of your content.

The OWNER has the exclusive right to **publicly distribute copies** of the work through selling, gifting, lending, or renting/licensing.



Rights and transfer of rights...

Copyrights are divisible. Any transfer of rights must be in writing by the Copyright Owner, regardless of whether money is involved.

Here are some major ways in which copyrights are transferred to others:

"WORK FOR HIRE"



PROPERTY OF COMPANY
Created by: COMPANY

Author or Artist is an **employee** of a company (or is a contractor on a large production like a movie). The Artist waives all authorship and rights, and in return gets a steady salary, benefits, etc.

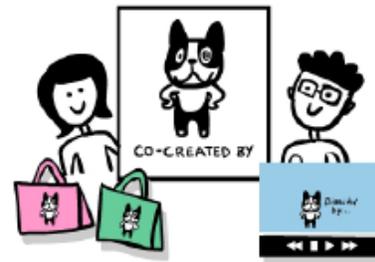
"ASSIGNMENT" OF RIGHTS



eg, COMPANY LOGO, business graphics

Author or Artist creates something and **sells all exclusive rights to the client**, who becomes the new Copyright Owner. Creators: It is not necessary to ASSIGN rights if a LICENSING agreement will work just as well. If transferring full rights, Artists should be compensated fairly.

"JOINT WORK"



Two or more collaborators have joint ownership rights and don't need to get legal permissions from each other to do what they want with the work (except in the case of assigning rights to a third party). Income should be split equally between the owners.

LICENSING of RIGHTS

LICENSING is the most flexible and customizable arrangement. The Author or Artist ("Licensor") retains copyright ownership and can specify exactly what rights are being sold to the Client ("Licensee"), and for the Client, the price could be more affordable because they are paying only for what they need.

- exclusive rights or non-exclusive rights?
- for which media?
- rights to re-distribute/sell? Or personal use only?
- for which products?
- for which territories?
- for how many months/years?
- rights to modify artwork?
- flat fee or royalties?
- transferable/non-transferable rights?



Duration of a Copyright Registration

Copyrights are limited to a set term, after which the copyright lapses and then the work falls into the public domain.

The length of the term depends on the type of authorship. If the author is a person, the copyright lasts 95 years after the death of the author. If the author is a company, as in a work for hire, the copyright lasts for the shorter of i) 120 years from creation or ii) 95 years from first publication.

Benefits of a timely registration

Registration is not a requirement for copyright protection. However, registration is a requirement if you want to file a lawsuit for an infringement action. A plaintiff must have a registration **before** filing suit.

The timing of registration is important because if a work is registered prior to the alleged infringement, the copyright owner is entitled to actual damages plus any additional profits of the infringer or statutory damages. Statutory damages can range from \$750 to \$30,000 per work infringed, and can be increased up to \$150,000 per work infringed if the infringement is willful. Timely registration also allows the copyright holder to seek attorneys' fees. Statutory damages are the reason you may have heard of astronomical awards for downloading and sharing music.

In addition to litigation, having a copyright registration allows the owner of a copyright to register with the U.S. Customs and Border Patrol to prevent importation of infringing contraband.

Copyright Notice

Copyright notice is a statement placed on copies of a work to inform the public that a copyright owner is claiming ownership of it.

A notice consists of three elements:

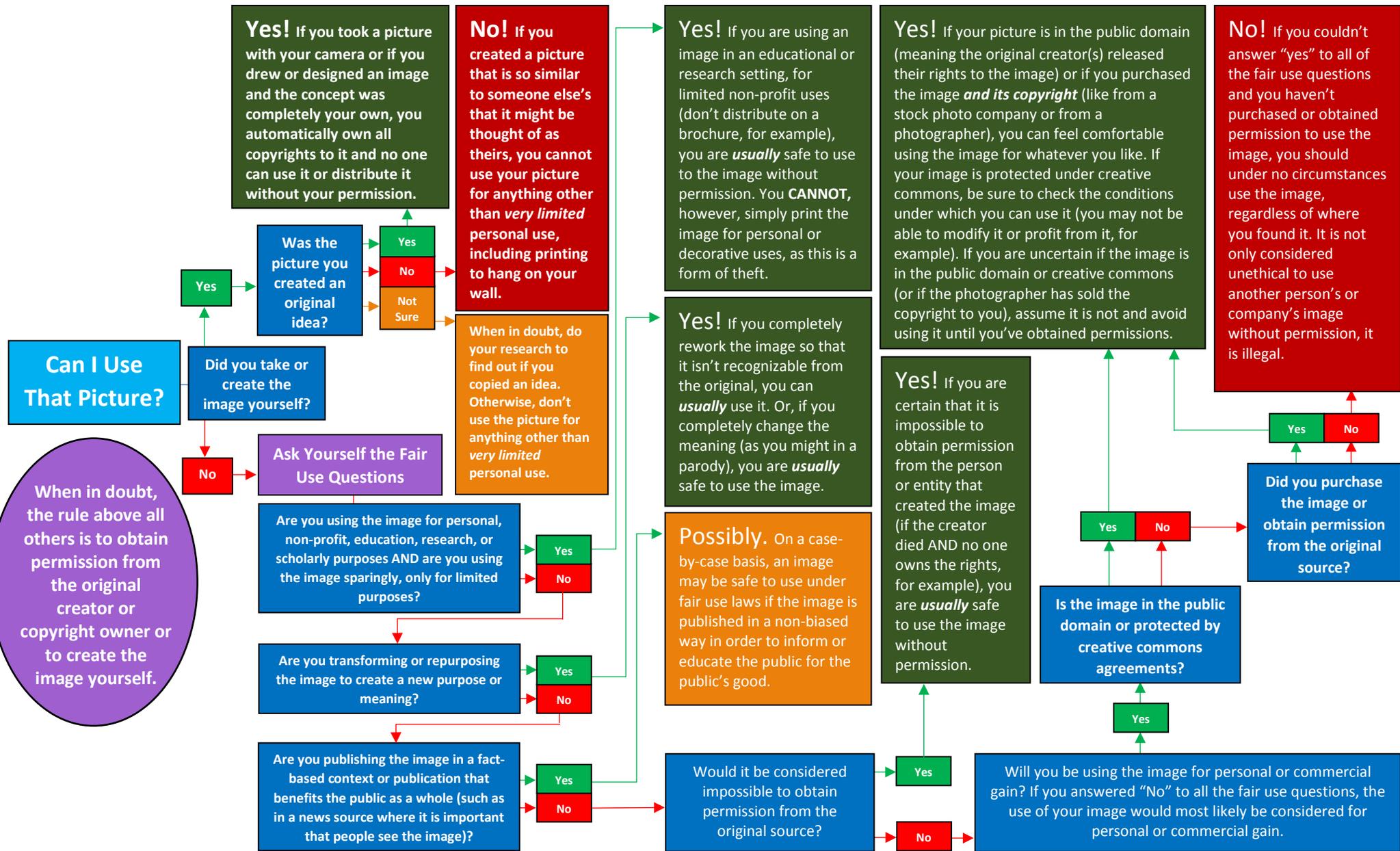
1. The copyright symbol ©; the word "copyright"; or the abbreviation "copr."
2. The year of first publication of the work
3. The name of the copyright owner

Example: © 2022 Cislo & Thomas LLP

Notice is important to help prevent "innocent infringement" which could be used as a defense in a civil action and, if successful, limit damages.

Can I Use That Picture?

The Terms, Laws, and Ethics for Using Copyrighted Images



Copyright The protection given to any created image or work from being copied or distributed without permission. All images are immediately given copyright to the creator when the image is created.

Fair Use The legal right to use copyrighted images as long as the images are used for educational, research, or personal use or as long as the image benefits the public good in some way.

Creative Commons Images that are copyrighted but that the creator has put provisions on their use. A creative commons license might stipulate, for example, that an image can be used as long as it isn't modified in any way.

Public Domain Images that no longer have copyright restrictions either because the creator willingly relinquished their copyright or because the creator is dead and no one owns the copyright.

Are these items Copyrightable?

1. Packaging

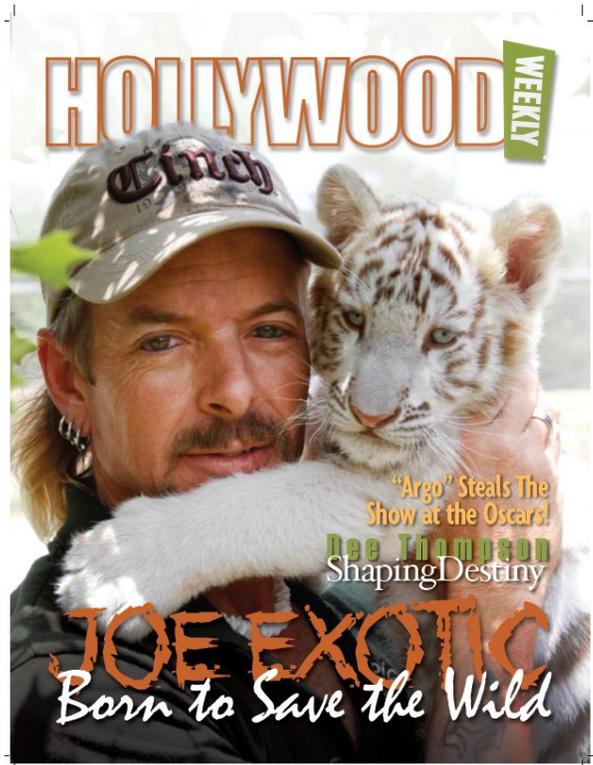


2. Pitcher



Are these items Copyrightable?

3. Photo



4. Chair



Are these items Copyrightable?

5. Jewelry



6. Architectural Drawing

