



Copyright Formalities and Duration

Copyright
Eric E. Johnson
ericejohnson.com



Konomark
Most rights sharable

About this material ...

- Your copyright casebook is not just a casebook. It's also a treatise. You should mark it up, make it yours, and take it with you into practice. It will help you work through copyright issues and get the analysis right.
- That said, in places there is a real blizzard of information—the material on formalities and duration especially so.
- Let me give you a little guidance to focus your learning. A few big, important things you should aim to commit to memory (so that you could get a closed-book multiple-choice question). For more fine-grained content, the really detailed stuff, you should be able to use your book to find the answer (such that you could do that for an open-book essay question).
- This slideshow is intended to help set some expectations in that regard.

Happy Note

To make things simpler and avoid huge amounts of text on the screen, assume all works are U.S. works by U.S. authors and all publication, alleged infringement, litigation, and other actions take place entirely in the United States.

A book by Aiesla Asadu is published in 2002. In 2021 I reproduced and distributed it without authorization. The copyright has never been registered. Is Aielsa now precluded from bringing a good infringement case against me?

- A. Yes
- B. No

A book by Aiesla Asadu is published in 2002. In 2021 I reproduced and distributed it without authorization. The copyright has never been registered. Is Aielsa now precluded from bringing a good infringement case against me?

A. Yes

B. No ←

She'll need to register before suit, but she can sue me over what I did before she registered.

A book by Aiesla Asadu is published in 2002. In 2021 I reproduced and distributed it without authorization. The copyright has never been registered. Am I better off as an infringement defendant compared to if she had registered in 2020 or before?

A. Yes, because I won't be liable for statutory damages

B. Yes, because I won't be subject to an injunction.

C. No, not really

A book by Aiesla Asadu is published in 2002. In 2021 I reproduced and distributed it without authorization. The copyright has never been registered. Am I better off as an infringement defendant compared to if she had registered in 2020 or before?

A. Yes, because I won't be liable for statutory damages ←

B. Yes, because I won't be subject to an injunction.

C. No, not really

Copyright Notice

- You no longer need it for copyright protection, since the U.S. joined Berne.
- But it can be helpful for protective purposes for many reasons, including negotiation/advertising purposes and for showing lack of innocence for damages in litigation.
- It can also be helpful for non-protective purposes: You leave a record of who people can contact for permission, and you leave a record to help the future gauge whether the material has entered the public domain.

17 U.S.C. § 401:

(a) General Provisions.—

Whenever a work protected under this title is published in the United States or elsewhere by authority of the copyright owner, a notice of copyright as provided by this section **may** be placed on publicly distributed copies from which the work can be visually perceived, either directly or with the aid of a machine or device.

(b) Form of Notice.—If a notice appears on the copies, it shall consist of the following **three elements**:

- (1) **the symbol © (the letter C in a circle), or the word “Copyright”, or the abbreviation “Copr.”; and**
- (2) **the year of first publication of the work; in the case of compilations, or derivative works incorporating previously published material, the year date of first publication of the compilation or derivative work is sufficient. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying text matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any 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.**



Are these good
copyright
notices?

Copyright Notice

© 2023 Eric E. Johnson

Copyright 2023 Eric E. Johnson

® 2023 Eric E. Johnson

© Eric E. Johnson 2023

® 2023 Eric E. Johnson

Copyright Notice

© 2023 Eric E. Johnson

↑ correct

Copyright 2023 Eric E. Johnson

↑ correct (at least in the U.S.)

© 2023 Eric E. Johnson

↑ correct for sound recordings

© Eric E. Johnson 2023

↑ not correct, a little embarrassing

® 2023 Eric E. Johnson

↑ not correct, extremely embarrassing

Copyright Notice

Copr. 2023 Eric E. Johnson

© Eric E. Johnson

© 2023 The Walt Disney Company

© 2023 Disney

Copyright Notice

Copr. 2023 Eric E. Johnson

↑ also correct (at least in the U.S.)

© Eric E. Johnson

↑ correct for PGS work on postcards,
toys, dolls, jewelry, useful articles

© 2023 The Walt Disney Company

↑ correct

© 2023 Disney

↑ also correct

The Public Domain and Duration

The “Fall”

- The phrase “fall into the public domain” is used by many—including your textbook authors, who use it repeatedly. But it’s rhetorically loaded and one-sided.
- One could just as well say “ascend into the public domain.” That gives it a different spin, doesn’t it?
- “Fall” suggests that the lapse of copyright is a bad thing. But it’s pretty clear—given the “limited times” provision of the Constitution, among other things—that part of the design of American copyright is to enrich the public domain.
- So if you are using “fall” to make a subtle rhetorical point in furtherance of a stance in favor of longer copyright terms or restoration of works to copyright, then fine.
- Otherwise, I encourage you to use the neutral verb “enter,” as in “enter the public domain.”

Some things in U.S. public domain

This assumes (1) publication was with the authorization of the author, (2) the work was first published in the U.S., (3) the work isn’t a sound recording:

- Works first published in 1927 or prior are in the public domain (as of 1/1/2023) because of term expiration.
- Works first published from 1928 through 1977 without a proper copyright notice are in the public domain for non-compliance with required formalities.
- Works first published from 1928 through 1963 with notice, but where the copyright was not renewed (requires digging), are in the public domain because of term expiration.
- Works of the U.S. government (prepared by an officer/employee within scope of employment / official duties) are in the public domain because of 17 U.S.C. § 105.

In 1929, a movie was distributed to and shown in movie theatres in the United States without a proper copyright notice. Today, is it copyright infringement to make unauthorized copies of the movie?

1. Yes
2. No

Steamboat Willie



In 1929, a movie was distributed to and shown in movie theatres in the United States without a proper copyright notice. Today, is it copyright infringement to make unauthorized copies of the movie?

1. Yes

2. No ←

Under the 1909 act, copyright didn't attach without proper notice. (But would you tangle with Disney about this?)

Using your casebook, determine when the copyright will expire:

Martha Meadows and Mercury Meadows (real names) co-authored a musical composition, "Walking on Moonshine" writing it down as sheet music in 1999. In 2002, they first published the sheet music, under their names. Martha will die before Mercury. She doesn't take care of her health, lives dangerously, plus, I can see into the future. When will the copyright to "Walking on Moonshine" expire?

Using your casebook, determine when the copyright will expire:

Martha Meadows and Mercury Meadows (real names) co-authored a musical composition, "Walking on Moonshine" writing it down as sheet music in 1999. In 2002, they first published the sheet music, under their names. Martha will die before Mercury. She doesn't take care of her health, lives dangerously, plus, I can see into the future. When will the copyright to "Walking on Moonshine" expire?

Answer: 70 years after Mercury dies.

Using your casebook, determine how when the copyright will expire:

Hexetron Heavy Industries Inc. had its HR professionals draft a secret internal memorandum: "Discipline for Suspected Corporate Spies." The memo was completed in 2000. The work has never been made available to the public, nor were copies ever been offered for sale, until 2010, when Hexetron published it in a book compilation titled "Global Solutions: Tough-Minded Management." When will the copyright to the memo expire?

Using your casebook, determine when the copyright will expire:

Hexetron Heavy Industries Inc. had its HR professionals draft a secret internal memorandum: "Discipline for Suspected Corporate Spies." The memo was completed in 2000. The work has never been made available to the public, nor were copies ever been offered for sale, until 2010, when Hexetron published it in a book compilation titled "Global Solutions: Tough-Minded Management." When will the copyright to the memo expire?

Answer: The year 2105, because that's 95 years from publication, which is sooner than 120 years after fixation.

WITHOUT USING your casebook, determine the earliest year from today onward that someone can reproduce the work without authorization:

The United States Space Force had uniformed officers write a 120-page manual titled, "The Modern Astronaut's Nutrition Guide and Cookbook." The manual was drafted and printed in 2020. It was not distributed publicly, but it was not classified as secret. Then, in 2023, the U.S. Space Force published the manual as a printed book and sold it through retailers nationwide.

WITHOUT USING your casebook, determine the earliest year from today onward that someone can reproduce the work without authorization:

The United States Space Force had uniformed officers write a 120-page manual titled, "The Modern Astronaut's Nutrition Guide and Cookbook." The manual was drafted and printed in 2020. It was not distributed publicly, but it was not classified as secret. Then, in 2023, the U.S. Space Force published the manual as a printed book and sold it through retailers nationwide.

Answer: The year 2023. (But it could have been done as soon as 2020.)

The manual is in the public domain under 17 U.S.C § 105 because it is a work of the federal government.

WITHOUT USING your casebook, determine the earliest year from today onward that someone can reproduce the work without authorization:

Christy Cogman authored a book and published it in 1926. She complied with all formalities.

WITHOUT USING your casebook, determine the earliest year from today onward that someone can reproduce the work without authorization:

Christy Cogman authored a book and published it in 1926. She complied with all formalities.

Answer: The year 2023.

Cogman's book is in the public domain.
(In fact it was in the public domain prior to 2023.)