



Copyrights and Wrongs

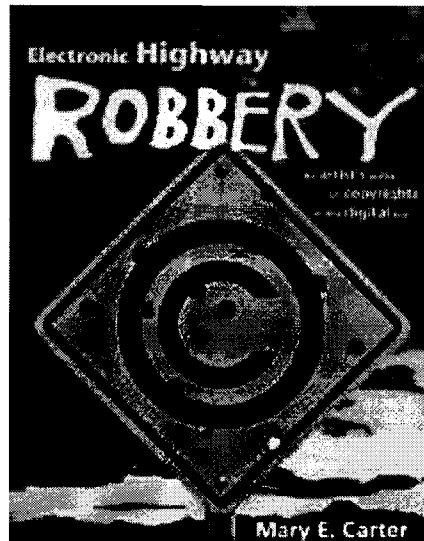
A basic, easy to understand guide to copyrights

by Mary E. Carter

You've heard about copyrights and you have this nagging little feeling that, whatever they are, they might just apply to the things you and others have created for the Web or the Internet.

But what the heck are those rights and how are you, and others, supposed to behave around them? Here's where you can get it, short and sweet, straight from an artist who knows the copyright ropes and knows how to put it into plain English. Here are the answers to those basic, and burning, copyright questions:

- What is the Digital Millennium Copyright Act? This important legislation helps protect your work on the Internet.
- What is copyright law? The least you need to know to protect your work.
- What is protected by copyright law? Copyrights only protect certain intellectual property. It must be original, creative, and in a tangible medium (which now includes digital format).
- What, exactly, are my copyrights? What copyrights mean to you.
- How do I get copyright protection? What you need to do to get the protection you need. Your lifetime, plus 50 years, if the work was created after January 1, 1978. Work created before that has different rules.



Copyright Series

Part I - Intro

Part II - copying

Part III - Protecting yourself

- May I sell the rights to copy my work? Yes, it's called a "license."
- What is NOT protected by copyright law? Certain things aren't protected. Be careful, this can get complicated.
- And what the heck is a Frumious Bandersnatch? Beware the dreaded "work for hire."
- Are there times when copying is okay? A short preview of copyright, part II.
- Web Resources. Click here.

What is the Digital Millennium Copyright Act?

Well, despite the titillating events in the news last fall, Congress produced some important copyright legislation to meet the needs of our accelerating digital era. In October, the Digital Millennium Copyright Act was signed into law by President Clinton. It tidily meets the needs of both copyright holders and the general public, which wants access to copyrighted materials on the Internet and Web.

The act:

- Mandates protection of copyrighted works in digital realms.
- Prohibits the circumvention of technological devices designed to protect copyrighted works.
- Provides for penalties for criminal infringement of digital works on-line.
- Protects service providers from liability in the transmission of copyrighted and/or infringed materials.
- Includes a licensing and royalty scheme for the transmission of copyrighted music over the Internet.

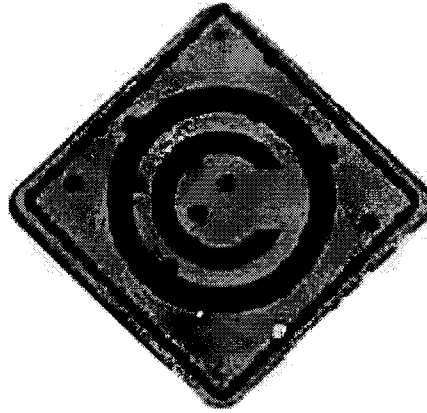
But it's complicated.

If you do not know the first thing about basic copyright law, this newest piece of copyright legislation is not the place to start. So, instead of diving into this end of the copyright pool, I would like to start at the shallow end and walk you carefully into deeper copyright waters.

What is copyright law?

Today's copyright laws are rooted in English common law and the U.S. Constitution. The copyright statutes were put into place to encourage the development of intellectual property in the form of

scientific and artistic products for the public good. Creators of this intellectual property are given exclusive rights, for limited times, to copy and distribute their works. The Constitutional framework supports the concept that creators may control the use of and seek payment for their original creations and for their derivative works. This essential concept makes possible the economic structure of the art, publishing, and software worlds. In other words, you are entitled to make money from your "artistic products."



For the sake of brevity, this article focuses on intellectual property in the form of artistic creations and will not delve into the copyrights applying to computer software or other scientific products.

What is protected by copyright law?

Your artwork is your *intellectual property*, and it is protected by copyright law.

Your art (graphics, photos, music, etc.) becomes protected by copyright when you take it from an idea or concept and make it into something fixed and tangible. The basic requirements that a work of art must meet to qualify for copyright protection are:

- *It must be original.* The artwork must be original, not copied from anything else.
- *It must be creative.* The artwork must show at least a minimum amount of creativity.
- *It must be fixed in a tangible medium.* The artwork must be fixed in one of these tangible mediums—in its digital state as 1s and 0s; paintings and drawings;

original music; your original artworks scanned into your computer; artwork you have created using bit-mapped or vector drawing, painting, or photo-manipulation programs or any combination of these digital media; buttons and graphics, cartoons, illustrations, and original writing that you have created for your Web site and that reside on your Web site.

The list is extensive, though not complete. If you can see or touch your artwork, with or without the aid of a machine or device, no matter what its medium, it qualifies as being fixed in a tangible medium of expression. And you own it and the copyrights to it. Unless it's been pre-empted by the Frumious Bandersnatch; see the section further on for due warning!

And that goes for the other guy's work, too. Buttons and graphics, cartoons, illustrations, and original writing found on other people's Web sites—as well as the myriad other fixed, tangible creations out there in the "real" world—it's all owned and copyrighted by someone. Always assume these things are copyrighted by their creators. They are not just there for the taking. If you wouldn't take it from a gallery without paying for it, you shouldn't take it from a Web site.

What, exactly, are my copyrights?

You, as the creator and owner of an original work, are granted a bundle of rights under the Copyright Act. The rights are exclusive, which means you, and only you, may use them or allow others to use them. And it is this exclusivity of copyright that makes it valuable to you.

The rights are separately licensable and enforceable and are as follows:

- *You have the exclusive right to reproduce your copyrighted work.* You can make as many copies of your original artwork as the market will bear. For example: You can use your original artwork as a button and as a background texture on your Web site.
- *You have the exclusive right to prepare derivative works based on your copyrighted works.* For

example: You can create a button graphic on your site, then alter its color and texture for use as other buttons on the site.

- *You have the exclusive right to distribute copies of your copyrighted work to the public by sale or other transfer of ownership, to prevent others from doing so, and to license others to do so.* For instance: You can post your work on your Web site and you have the legal right to prevent anyone else from posting your work on their Web site without your consent and/or payment of a usage fee.
- *You have the exclusive right to perform your copyrighted work publicly* in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works. For instance: You may put your audiovisual work on-line, where those who log on can play it back for their pleasure.
- *You have the exclusive right to display your copyrighted work publicly* in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including individual images of a motion picture or other audiovisual work. For instance: You may display your work at an art gallery or on the Web.
- *You can sell or license any or all of these rights, piecemeal or all together.* In fact, it's the usual thing for a graphic designer to specify that a given graphic design may be used only for a specified purpose and/or for a limited time. You then retain all of your other exclusive copyrights in the work.

How do I get copyright protection?

You get copyright protection automatically on creation. But to protect yourself even further, it is best to register your work and to add a copyright notice.

Registration is not necessary, but is highly recommended.

Yes, your work is automatically protected by copyright law, even if you do not file the official registration forms, but if there is an infringement, your day in court may be easier and more lucrative if you have registered your work. To

begin with, you can't carry on a copyright lawsuit if you haven't registered. And registration makes it much easier to prove that you own the copyright you're claiming, and that it began to apply to the work on the date you claim it did. Finally, you may be eligible for certain kinds of money damages and for reimbursement of attorney's fees if you've registered.

That said, it's a snap to register your copyrights on-line. Just click over to the [United States Copyright Office Web Site](#) and select CORDS (Copyright Office Electronic Registration, Recordation and Deposit System). Follow the steps, and you're assured of timely registration. Or you can select Application Forms and download the forms you need to do your registration by regular mail.

Handy hint: You may register a series of graphics for one low fee of \$20, so just register every Friday the work you've created that week. That way, no matter what happens, your copyrights will be up-to-date and in place.



A copyright notice is not necessary, but is desirable.

The standard internationally recognized copyright notice looks like this: © **Mary E. Carter 1999**

Place the copyright notice where people can readily see it —near the top of your Web site, for instance. Make it large enough that it can be easily read and recognized. You may also add the words: "All rights reserved."

You can type "(c)" or use the real copyright symbol © by holding down the ALT key and typing 0169 on the numberpad (it won't work if you type it on the numbers above the letter keys). If you're using an old-fashioned HTML editor, type "©" (without the quotes) into your code.

There are high tech ways to embed copyright information right into your digital artwork and on-line materials. We will explore these in another article.

How long do copyrights last?

- For the most part, your copyrighted work is protected for your lifetime plus 50 years. That's the general rule for work created on or after January 1, 1978.
- Works created before January 1, 1978, are subject to different rules. If the owner of one of those older copyrights does everything right, the total length of copyright protection is 75 years from the date the copyright was obtained.
- If the work is anonymous or pseudonymous, or was done as work made for hire, the protection lasts for a total of 75 years from its first publication, or 100 years from its creation, whichever is shorter. The exception: If an anonymous or pseudonymous author's identity is revealed during the term of the copyright, the term changes to the life of the author plus 50 years.
- When the term of protection expires, the work goes into the public domain, which simply means copyright protection no longer applies, and no one needs permission, or must pay anything, for the right to use the work. An excellent source of safe, public-domain artwork can be found in books published by Dover books.

May I sell the rights to copy my work?

Yes. Such a sale is called a "license." It means you give someone else permission to "infringe," to use your work in ways you agree to and describe and, generally speaking, for a stated usage fee.

You may sell all of the rights to copy your work, or some of the rights, restricting the scope of the license in terms of duration, geographic scope, markets, media, and so forth. For example: You might grant an on-line magazine the right to use a graphic element on its Web site, but not sell it the rights to use the graphic on promotional mugs for the site. In this case you would be paid one usage fee for the use of the graphic element on the site and could, at some future date, negotiate another usage fee if the magazine wanted to use the graphic element on its mugs.

And you know what? You may also "give" your copyrights

away. As the creator of intellectual property—artwork—you have the right NOT to charge for the right to copy your work. For instance: You may allow people, anywhere, anytime, to download copies of your Web site graphics onto their Web sites for FREE.

What is NOT protected by copyright law?

Certain things are not protected by copyright law, regardless of whether or not they are fixed in a tangible form. They are: any idea, procedure, process, system, method of operation, concept, principle, or discovery, and many lists of things such as the lists of names, addresses, and phone numbers in the white pages of a phone book and many lists found in on-line databases. But be careful. If a list has been compiled using a unique methodology, or if the list is designed to look unique, it may be copyrighted.

Beware the Frumious Bandersnatch!

There's always an exception to copyright law and this one can bite back harder than Lewis Carroll's mythical beast.

Work made for hire does not belong to its creator. You do *not* own your original artwork or the copyright to it when you produce "work made for hire" (sometimes called "work for hire"). There are only two ways in which work can be work made for hire and they're mutually exclusive. But if either applies, the work is work made for hire and the copyright in the artwork you create for your employer belongs to your employer, not you. In fact, the copyright law considers the employer to be the "author"—which means creator—of the work. Here's how it works:

- You, the creator of the work, are an employee of a firm or person, and you produce the artwork as part of your job. Generally, you can tell who is an employee and who is not, but sometimes it gets tricky. If you're on the payroll, and you work in the boss's offices or plant, and your supervisor can tell you how to do your job, and your job description includes the creation of artwork, then the work is work made for hire. Depending on your employer and contract, *this could even apply to artwork you create outside your job or during your own time!*

- You, the creator of the work, are free-lance, an independent contractor, but your client has come to you with an assignment for the work, and you and your client both sign a contract that states that your work is "made for hire," or "for hire," or has words to that effect. It does not matter that you did the work in your own office or that you pay your own taxes and health benefits. If you have a written contract or sign a purchase order that's also signed by your client and that has words to the effect that your work is "for hire," then your client owns everything, and you're not considered the author/creator of the work.

Are there times when copying is okay?

Yes, there are. There are two sorts of circumstances where copying is okay. The first involves things that either lack or have lost copyright protection, such as creations in the public domain, ideas, and facts. The second involves things that are covered by copyright, but for which some instances of copying are allowable because of the Copyright Act's "fair use" exception. There is a lot you should know about in these situations, so we will continue this foray into deeper copyright waters in another article. Find out more about when it's okay to copy in the next copyright article "When Copying is Okay."

Web Resources

U.S. Copyright Web Site: The official Web site of the U.S. Copyright Office is loaded with the copyright statute, new legislation, registration forms, international copyright information, and FAQ's. Easy to navigate and fundamental information. Should be a bookmark for anyone who creates on the Web or Internet.

The Copyright Web Site: Deep within the belly of those beastly search engines—with their thousands of dry, pedantic copyright sites—this one stands out for its sense of humor, zany graphics, and plangent thinking. You get the basics. But you get a lot of food for thought here, too. A must.

www.e-rights.com: Author's rights in the electronic age.