



**DEFENSE LOGISTICS AGENCY  
DEFENSE ENERGY SUPPORT CENTER  
8725 JOHN J. KINGMAN ROAD, SUITE 4950  
FT. BELVOIR, VIRGINIA 22060-6222**

IN REPLY  
REFER TO

DESC-G

April 10, 2003

**SUBJECT: Copyrights and Penalties for Copyright Violations**

Many people are surprised to learn that the right of copyright emanates from the Constitution. Under the U.S. Constitution, Article I, Section 8, clause 8. Congress is authorized "*to promote Progress of Science and useful Arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.* Violation of copyright law or copyright "*infringement*" may subject the violator or "copyright infringer" to criminal and civil penalties.

Under 17 USC § 101 "Copies" are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "copies" includes the material object, other than a phonorecord, in which the work is first fixed. "Publication" is 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. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. Per 17 USC §102, the exclusive right to reproduce those copies exists in literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works. Under 17 USC § 106, a copyright owner has the exclusive right to reproduce, display or distribute those works. Unauthorized reproduction of a copyrighted item is called "*infringement.*" In general, a copyright in a work created on or after January 1, 1978, subsists from its creation and, except as provided by the following subsections, endures for a term consisting of the life of the author and 70 years after the author's death.<sup>1</sup> Different laws apply to works created prior to that date.<sup>2</sup>

---

<sup>1</sup> See 17 USC § 301, accessible on the Internet at <http://www4.law.cornell.edu/uscode/17/302.html>

<sup>2</sup> See 17 USC §§ 302, 303 & 305.

AA 1

Criminal penalties for willful infringement of copyright law include up to 5 years imprisonment for first offenses and up to 10 years imprisonment for subsequent offenses and fines as indicated in 17 USC § 506 and 18 USC § 2319, see Enclosure A.

You can tell that a work is copyrighted if the symbol ©, the abbreviation "*copr.*" or the word "*copyright*" appears on the work in question. An author need only add that copyright indication to the work in order to preserve his copyright. By filing a civil law suit, a copyright holder may recover from the copyright infringer actual damages and any profits or at his election statutory damages of a sum between \$750 - \$30,000. In addition, the court may increase the damages to such amount, not exceeding \$50,000 or \$1 per copy, whichever is greater, as the court determines to be just. Where the copyright holder can show the infringement was willful, a court can increase statutory damages to \$150,000.

There is also a concept of "*fair use.*" Per 17 USC § 107, notwithstanding the provisions of sections 106 and 106A, the *fair use* of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use exception, the factors to be considered shall include -

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

If any of your personnel have questions about whether intended uses of copyrighted material constitute "fair use," this office can provide a legal opinion. Various courts have ruled that photocopying a newsletter is not "fair use" because a commercial producer of a

newsletter frequently produces it for sale. By making copies of the copyrighted material for distribution without the permission of the copyright holder, one infringes on the copyright. Similarly, posting copyrighted material on the Internet may constitute an improper use. The author or creator of a work may or may not be the copyright holder as the copyright may be transferred to another. Generally, if one wishes to distribute copyrighted material, photographs, articles, artwork, etc. for instruction or to conference attendees at a conference, it is wise to contact the author or copyright holder for permission to copy and distribute the item. Frequently, such permission will be granted free of charge or there may be a distribution charge.

If you have any other questions, you can reach me at (703) 767-5001 or via email at [Christine.Poston@dla.mil](mailto:Christine.Poston@dla.mil).

CHRISTINE L. POSTON  
Fraud Counsel  
Office of Counsel

Enclosures