

**PHOTOGRAPHY COPYRIGHT:
A COLLECTION OF RIGHTS**

Jan I. Berlage
Christopher G. Ladner*
Gohn Hankey & Berlage LLP
201 North Charles Street, Suite 2101
Baltimore, MD 21201
Phone: (410) 752-9300
Facsimile: (410) 752-2519
JBerlage@GHSLLP.com

* Christopher G. Ladner is a Virginia Licensed Attorney

| | |
|--------------------------------|--|
| What does it protect? | Expression |
| Rights conferred? | <p>Subject to exceptions, the Copyright Act grants five rights to a copyright owner:</p> <p>(1) <u>the right to reproduce</u> the copyrighted work;</p> <p>(2) <u>the right to prepare derivative works</u> based upon the work;</p> <p>(3) <u>the right to distribute copies</u> of the work to the public;</p> <p>(4) <u>the right to perform</u> the copyrighted work publicly; and</p> <p>(5) <u>the right to display</u> the copyrighted work publicly.</p> |
| Requirements for protection? | Original and creative, and fixed in a tangible medium of expression |
| How to obtain protection? | Automatic with use, registration to enforce |
| Time to obtain? | 7-9 months |
| How long does protection last? | Life + 70 years, 95 or 120 years for work for hire |
| Filing cost? | \$35 regular for one photograph: \$55 for a collection; and \$800 to expedite |

What can be copyrighted?

An original idea fixed in a tangible medium of expression

What constitutes an original idea?

There is a very low threshold to qualify as an “original idea” for copyright expression. A very small amount of creative expression is required. It must be at least a slight alteration and not a copy of something already existing.

How is a copyright created?

As soon as an original idea is fixed in a tangible means of expression. It is created automatically when the individual creates the work. So, when a photograph with some creative expression is taken; the copyright is created instantly

Why should I register my work if copyright protection is automatic?

Registration is recommended for a number of reasons. Many choose to register their works because they wish to have the facts of their copyright on the public record and have a certificate of registration. Registered works may be eligible for statutory damages and attorney's fees in successful litigation. Finally, if registration occurs within five years of publication, it is considered prima facie evidence in a court of law.

Do you have to defend your copyright?

No, you cannot lose your copyright due it falling into common use. This is a distinction from trademarks where one is required to actively active the mark.

Test for copyright infringement.

If the infringer had access to your work?

AND

Is the work substantially similar to your copyrighted work?

Remedies for copyright infringement?

- Injunctions
- Money damages
- Actual damages and profits
- Statutory damages
- Cost's and attorney fees
- Criminal penalties

What is Work Made for Hire?

- A work prepared by an employee within the scope of the employee's employment;
- A work specially ordered or commissioned in certain specified circumstances.
- Must use legal name, and not a pseudonym.

Works Made for Hire are considered to be owned/authored by the employer or the commissioning party. See Circular 30 (<https://www.copyright.gov/circs/circ09.pdf>).

The Work and the Copy.

Ownership of a 'copy' of a photograph — the tangible embodiment of the 'work' — is distinct from the 'work' itself — the intangible intellectual property. The owner of the 'work' is generally the photographer or, in certain situations, the employer of the photographer. Even if a person hires a photographer to take pictures of a wedding, for example, the photographer will own the copyright in the photographs unless the copyright in the photographs is transferred, in writing and signed by the copyright owner, to another person. The subject of the photograph generally has nothing to do with the ownership of the copyright in the photograph.

The Copyright Act protects a variety of photographic works including photographs that are created with a camera and captured in a digital file or other visual medium such as film.

Works commonly registered in this category:

- Commercial
- Events
- Personal
- Scientific
- Portrait
- Documentary Photos
- Fine Arts
- Photojournalism
- Sports
- Editorial
- Forensic
- School
- Wedding

<https://www.copyright.gov/registration/photographs/index.html>

Application for copyright registration to the Copyright Office ("C.O.") must contain:

- Completed application form;

- Nonrefundable filing fee; AND
- Nonreturnable deposit of copy/copies of work being registered/deposited to the Copyright Office

<https://www.copyright.gov/fls/sl35.pdf>

Photography is under the Visual Arts (“VA”) Form, which could be done through online or paper application. (See Form VA)

Online Application is the preferred way to register for basic claims for VA works.

Advantages:

- Lower filing fee
 - \$35 for single author (sole claimant in a single work—not made for hire)
 - \$55 for all other online filings
- Fastest processing time
- Online status tracking
- Secure payment (credit/debit card, electronic check, or C.O. deposit account)
- Option to upload certain categories of deposits directly into eCO as electronic files
 - You may still submit hardcopy deposit when registering online

Paper Application

- Go to the www.copyright.gov/forms/ to access the C.O. forms
 - Forms could be requested by postal mail
- Click "Visual Form VA" (“Form VA”)
- Complete the Form VA
- Mail the Form VA form with check/money order and your deposit (work)
- Fee of \$85
 - “The higher fee compared with online registration reflects the higher labor cost to process claims submitted on paper.”

<https://www.copyright.gov/fls/sl35.pdf>

Applications that could only be done through paper application:

- Form CA for correction or amplification of information in a registration;
- Form D-VH for registration of vessel hull designs;
- Form MW for registration of mask works;
- Form GATT for registration of works in which the U.S. copyright was restored under the 1994 Uruguay Round Agreements Act;
- Form RE for renewal of copyright claims; and
- Forms for group submissions

How Long Does Copyright Protection Last?

- Any work created after January 1, 1978: copyright protection lasts for the life of the author plus an additional 70 years
- Any anonymous work/a pseudonymous work/or work made for hire: copyright endures for a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation, whichever expires first
- Any work published prior to 1978: Varies.
 - See Chapter 3 of the Copyright Act (Title 17 of the United States Code) or Circular 15a (Duration of Copyright) and Circular 1 (Copyright Basics).

<https://www.copyright.gov/help/faq/faq-duration.html>

Do I Have to Renew my Copyright?

- No. Works created after January 1, 1978 does not need to be renewed.

<https://www.copyright.gov/help/faq/faq-duration.html>

Copyright Office Contact Information

UNITED STATES COPYRIGHT OFFICE

Library of Congress
101 Independence Avenue SE
Washington, DC 20559-6000

WEBSITE

www.copyright.gov

PUBLIC INFORMATION OFFICE

Staff members are on duty to answer questions from 8:30 am to 5:00 pm, eastern time, Monday through Friday, except federal holidays. Recorded information is available twenty-four hours a day. Phone: (202) 707-3000 or 1-877-476-0778 (toll free).

FORMS AND PUBLICATIONS

(202) 707-9100 or 1-877-476-0778 (toll free)

NEWSNET

Subscribe to the Copyright Office electronic mailing list on the Copyright Office website at www.copyright.gov. Click on *News*.

BLOG

Subscribe to the Copyright Office's blog Creativity at Work at <https://blogs.loc.gov/copyright/>.

Estimated Value of Materials Transferred to the Library of Congress, Fiscal 2017

| | Registered works transferred | Non-registered works transferred | Total works transferred | Average unit price | Value of works transferred |
|---|------------------------------------|--|----------------------------|-----------------------|-------------------------------|
| Books^{1,2} | 155,909 | 78,802 | 234,711 | | \$15,203,373 |
| Book-hardbound | 56,342 | 21,808 | 78,150 | \$98.96 | \$7,733,724 |
| Book-softbound | 80,881 | 13,746 | 94,627 | \$44.77 | \$4,236,451 |
| eBooks (ProQuest) | 18,686 | 20,141 | 38,827 | \$5.34 | \$207,336 |
| eBooks (special relief) ³ | 0 | 23,107 | 23,107 | \$130.95 | \$3,025,862 |
| Serials^{1,3} | 82,418 | 293,849 | 376,267 | | \$22,327,814 |
| Periodicals ⁴ | 82,343 | 193,623 | 275,966 | \$54.35 | \$10,499,126 |
| Newspapers ¹ | 75 | 20,880 | 20,955 | \$1.50 | \$22,003 |
| eSerials ⁵ | 0 | 79,346 | 79,346 | \$148.80 | \$11,806,685 |
| Microforms | 3,962 | 3,646 | 7,608 | | \$1,141,200 |
| Microfilm | 3,962 | 3,646 | 7,608 | \$150.00 | \$1,141,200 |
| Microfiche | 0 | 0 | 0 | \$9.59 | \$0 |
| Motion pictures | 4,739 | 0 | 4,739 | | \$1,056,924 |
| Film—35mm/70mm/IMAX ⁶ | 36 | 0 | 36 | \$13,460.26 | \$484,569 |
| Film—16mm | 0 | 0 | 0 | \$1,500.00 | \$0 |
| Videotape | 4,703 | 0 | 4,703 | \$121.70 | \$572,355 |
| CD/DVDs | 27,094 | 1,706 | 28,800 | \$25.00 | \$720,000 |
| Printed music | 3,594 | 1,604 | 5,198 | \$65.28 | \$339,325 |
| Maps | 164 | 99 | 263 | \$51.02 | \$13,418 |
| Prints, posters, photographs, and works of art | 385 | 74 | 459 | \$41.47 | \$19,035 |
| Total | 278,265 | 379,780 | 658,045 | | \$40,821,089 |

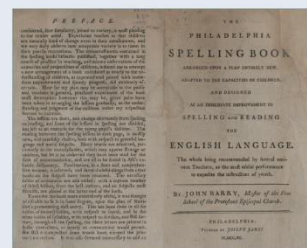
- As of 2010, categories were changed to match format codes in the Copyright Office's eCO system. "Newspapers" and "Film-35mm/70mm/IMAX" that year showed substantially fewer works than in previous years where an arithmetical calculation was used. Books and serials showed an increase, partly due to counting published "Dramas" under "Books," as well as increased productivity in that year.
- 60 percent of "Books" are selected for the collections; 40 percent are used for the Library's exchange program.
- In the "Serials" category, 70 percent of periodicals and newspapers are selected for the collections; 100 percent of e-series are selected.
- The figure for non-registered "Periodicals" includes: (1) an estimate based on average loads in hampers delivered to Library processing and custodial divisions and (2) a count of serials issues checked in through the Copyright Acquisitions Division. For the estimated portion, there was an earlier change in physical method of delivery, which decreased the average amount per hamper. The figures above reflect a reasonable estimate of current receipts per hamper and are periodically reviewed.
- Totals include certain e-books and e-series for which online access is negotiated with publishers for the Library of Congress under section 407.

Non-fee Information Services to Public, Fiscal 2017

| | |
|--|----------------|
| Public Information and Education/ Public Records and Repositories Direct Reference Services | |
| In person | 2,448 |
| By correspondence | 6,709 |
| By email | 58,981 |
| By telephone | 80,108 |
| Total | 148,246 |
| Office of the General Counsel Direct Reference Services | |
| By correspondence | 34 |
| By telephone | 24 |
| Total | 58 |
| Receipt Analysis and Control Division Services | |
| By correspondence | 2,463 |
| By email | 15,797 |
| By telephone | 4,780 |
| Total | 23,040 |
| Licensing Division Direct Reference Services | |
| By correspondence or email | 1,745 |
| By telephone | 826 |
| Total | 2,571 |
| Acquisition Division Direct Reference Services | |
| By correspondence or email | 0 |
| By telephone | 20 |
| Total | 20 |
| eCO Service Help Desk | |
| By email | 15,342 |
| By telephone | 33,739 |
| Total | 48,721 |
| Grand Total Direct Reference Services | 222,656 |

Copyright Registrations, 1790–2017

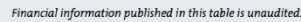
| Date | Total | Date | Total | Date | Total | Date | Total |
|--------------|----------------------|-------------------|---------|------|---------|------|----------------------|
| 1790–1869 | 150,000 ¹ | 1901 | 93,299 | 1933 | 139,361 | 1965 | 293,617 |
| 1870 | 5,600 | 1902 | 93,891 | 1934 | 141,217 | 1966 | 286,866 |
| 1871 | 12,688 | 1903 | 99,122 | 1935 | 144,439 | 1967 | 294,406 |
| 1872 | 14,164 | 1904 | 104,431 | 1936 | 159,268 | 1968 | 303,451 |
| 1873 | 15,352 | 1905 | 114,747 | 1937 | 156,930 | 1969 | 301,258 |
| 1874 | 16,283 | 1906 | 118,799 | 1938 | 168,663 | 1970 | 316,466 |
| 1875 | 16,194 | 1907 | 124,814 | 1939 | 175,450 | 1971 | 329,696 |
| 1876 | 15,392 | 1908 | 120,657 | 1940 | 179,467 | 1972 | 344,574 |
| 1877 | 16,082 | 1909 | 121,141 | 1941 | 180,647 | 1973 | 353,648 |
| 1878 | 16,290 | 1910 | 109,309 | 1942 | 182,232 | 1974 | 372,832 |
| 1879 | 18,528 | 1911 | 115,955 | 1943 | 160,789 | 1975 | 401,274 |
| 1880 | 20,993 | 1912 | 121,824 | 1944 | 169,269 | 1976 | 410,969 ² |
| 1881 | 21,256 | 1913 | 120,413 | 1945 | 178,848 | 1976 | 108,762 ² |
| 1882 | 23,141 | 1914 | 124,213 | 1946 | 202,144 | 1977 | 452,702 |
| 1883 | 25,892 | 1915 | 116,276 | 1947 | 230,215 | 1978 | 331,942 |
| 1884 | 27,727 | 1916 | 117,202 | 1948 | 238,121 | 1979 | 429,004 |
| 1885 | 28,748 | 1917 | 112,561 | 1949 | 201,190 | 1980 | 464,743 |
| 1886 | 31,638 | 1918 | 107,436 | 1950 | 210,564 | 1981 | 471,178 |
| 1887 | 35,467 | 1919 | 113,771 | 1951 | 200,354 | 1982 | 468,149 |
| 1888 | 38,907 | 1920 | 127,342 | 1952 | 203,705 | 1983 | 488,256 |
| 1889 | 41,297 | 1921 | 136,765 | 1953 | 218,506 | 1984 | 502,628 |
| 1890 | 43,098 | 1922 | 140,734 | 1954 | 222,665 | 1985 | 540,081 ³ |
| 1891 | 49,197 | 1923 | 151,087 | 1955 | 224,732 | 1986 | 561,208 ³ |
| 1892 | 54,741 | 1924 | 164,710 | 1956 | 224,908 | 1987 | 582,239 ³ |
| 1893 | 58,957 | 1925 | 167,863 | 1957 | 225,807 | 1988 | 565,801 |
| 1894 | 62,764 | 1926 | 180,179 | 1958 | 238,935 | 1989 | 619,543 ⁴ |
| 1895 | 67,578 | 1927 | 186,856 | 1959 | 241,735 | 1990 | 643,602 |
| 1896 | 72,482 | 1928 | 196,715 | 1960 | 243,926 | 1991 | 663,684 |
| 1897 | 75,035 | 1929 | 164,666 | 1961 | 247,014 | 1992 | 606,253 |
| 1898 | 75,634 | 1930 | 175,125 | 1962 | 254,776 | 1993 | 604,894 |
| 1899 | 81,416 | 1931 | 167,107 | 1963 | 264,845 | 1994 | 530,332 |
| 1900 | 95,573 | 1932 | 153,710 | 1964 | 278,987 | 1995 | 609,195 |
| Total | | 37,753,284 | | | | | |



The first copyright registration, "The Philadelphia Spelling Book" by John Barry, is registered in the U.S. District Court of Pennsylvania.

- Estimated registrations made in the offices of the Clerks of the District Courts [Source: Pamphlet entitled *Records in the Copyright Office Deposited by the United States District Courts Covering the Period 1790–1890*, by Martin A. Roberts, Chief Assistant Librarian, Library of Congress, 1939].
- Registrations made July 1, 1976, through September 30, 1976, reported separately owing to the statutory change making the fiscal years run from October 1 through September 30 instead of July 1 through June 30.
- The totals for 1985–87 were corrected as of the fiscal 2004 annual report to include mask works registrations.
- The total for 1989 was corrected as of the fiscal 2004 annual report to be consistent with the fiscal 1989 table of "Number of Registrations by Subject Matter."
- Implementation of reengineering resulted in a larger than normal number of claims in process, temporarily reducing the total claims completed and registered.

as of September 30, 2017



Fee Receipts and Interest, Fiscal 2017

| <i>Fees</i> | <i>Receipts Recorded¹</i> |
|---|--------------------------------------|
| Copyright registration | \$27,792,765 |
| Registration special handling/expedited services | \$2,089,605 |
| Vessel design registration | \$16,803 |
| Renewal registration | \$13,210 |
| Mask works registration | \$9,175 |
| Subtotal | \$29,921,558 |
| | |
| Notice of intention (17 USC 115) | \$3,313,894 |
| Recordation of documents | \$2,438,591 |
| Certifications | \$639,884 |
| Recordation special handling/expedited services | \$430,490 |
| Preregistrations | \$133,450 |
| Designation of Agent (DMCA) | \$52,908 |
| Other services and fees | \$49,328 |
| Searches | \$27,954 |
| Miscellaneous licensing fees | \$20,131 |
| Subtotal | \$7,106,630 |
| | |
| Total Receipts Recorded | \$37,028,188 |
| | |
| Investment earnings | \$40,993 |
| Reconciling transactions ² | (\$18,944) |
| Refunds | (\$4,095) |
| | |
| Fee Receipts and Interest Applied to the Appropriation¹ | \$37,046,142 |

3 "Fee Receipts and Interest Applied to the Appropriation" are income from fees and deposit account interest that were fully cleared and deposited to the Copyright Office appropriation account within the fiscal year.

Statutory Licensing Statement of Fiduciary Net Assets, Fiscal 2017

| | (in thousands) |
|--|----------------|
| Investments in U.S. Treasury securities, net | \$1,175,083 |
| Fund Balance with Treasury | \$2,727 |
| Interest receivable | \$68 |
| Accrued liabilities | (\$119) |

Total Fiduciary Net Assets **\$1,177,759**

Statutory Licensing Statement of Fiduciary Activity, Fiscal 2017

| | (in thousands) |
|--------------------------------|----------------|
| Beginning Fiduciary Net Assets | \$1,103,819 |
| Royalty Fees Received | \$217,838 |
| Investment Earnings | \$7,197 |

| | |
|--|------------------|
| Total Inflows to Fiduciary Net Assets | \$225,035 |
| Distributions to copyright owners | (\$148,642) |
| Refunds of royalty fees | (\$407) |
| Net royalty fees retained for administrative costs | (\$2,046) |

| | |
|---|--------------------|
| Total Outflows from Fiduciary Net Assets | (\$151,095) |
| Increase in Fiduciary Net Assets | \$73,940 |

Ending Fiduciary Net Assets **\$1,177,759**

Statutory Licensing Filing and Royalty Fees Collected and Offset for Administrative Costs, Fiscal 2017

| | Total | Licensing Division | (in thousands) Copyright Royalty Judges |
|---------------------------------------|---------|-----------------------|---|
| Filing Fees | \$2,054 | \$2,053 | \$1 |
| License filing year 2017 royalty fees | \$2,375 | \$2,078 | \$297 |
| License filing year 2016 royalty fees | \$1,500 | \$1,400 | \$100 |

Total **\$5,929** **\$5,531** **\$398**

Statutory Licensing Net Royalty Fees Retained for Administrative Costs, Fiscal 2017

| | Total | Licensing Division | (in thousands) Copyright Royalty Judges |
|----------------------------|-----------|-----------------------|---|
| 2017 Royalty fees retained | \$2,375 | \$2,078 | \$297 |
| 2016 Royalty fees retained | \$1,500 | \$1,400 | \$100 |
| 2016 Royalty fees refunded | (\$1,425) | (\$1,400) | (\$25) |
| 2015 Royalty fees refunded | (\$390) | (\$390) | — |
| 2012 Royalty fees refunded | (\$14) | (\$14) | — |

Total **\$2,046** **\$1,674** **\$372**

REGISTRATION & RECORDATION

COPYRIGHT REGISTRATIONS BY SUBJECT MATTER



202,476
Total Literary Works



103,510
Total Performing Arts Works



86,466
Total Visual Arts Works

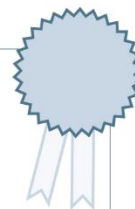


59,247
Total Sound Recordings

452,122

**Total Copyright
Registrations**

including Renewals, mask work
and vessel design registrations



STATUTORY LICENSING ROYALTIES BY THE NUMBERS

In Fiscal 2017, the Copyright
Office collected almost

\$220 million

in royalties from users of
copyright statutory licenses.

The Copyright Office continued
to manage over

one billion

in statutory licensing royalties.

The Copyright Office made four
separate distributions totaling

\$148.6 million

collected in previous years.

\$29.9
receipts from
copyright
registration
(in millions)

\$2.4
receipts from
document
recording
(in millions)

\$220
royalty fees
collected
(in millions)