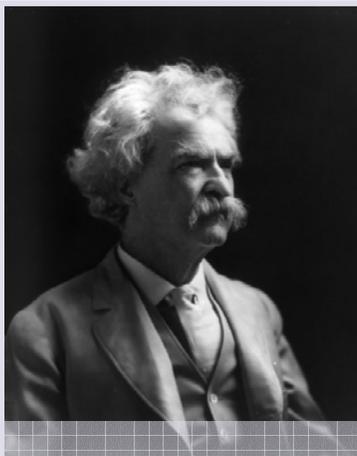




On Copyright

This article comes with its own warning, which is simply a reminder of what Mark Twain observed in the late 19th century: “Only one thing is impossible for God – to find any sense in any copyright law on the planet. Whenever a copyright law is to be made or altered, then the idiots assemble.”

Well, even Twain occasionally misspoke. It must be conceded that the Founders who wrote the Constitution of the United States were hardly “idiots.” They chose, after all, to include a provision for copyright protection directly into that august document.



Author Samuel Clemens – better known as “Mark Twain” – in a 1904 photograph from the Library of Congress Prints and Photographs Collection.*

“The Congress shall have the power,” states Article I, Section 8, Clause 8, “... 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.” At the very first session of Congress,

legislators passed the Copyright Act of 1790, which provided for a copyright protection term of 14 years, renewable for another 14.

Times change, and the copyright laws have regularly done likewise. Today, copyright protects a work for the lifetime of its “author” plus seventy years, and registration of that copyright in the U.S. Copyright Office (itself an

arm of the Library of Congress) opens the door to the courts for the copyright holder to sue an infringer. If the work was “made for hire,” then the employer of the writer is considered the “author” and a corporate “author” receives a copyright term of 95 years.

In other words, a hit song written in 2003 by a self-employed 20-year-old will remain protected by copyright in the United States until 2128 (if the writer lives as long as 75 years). However, if that writer was an employee, then his employer’s copyright will expire in 2098 no matter when the writer expired.

For all types of writers, the basics of copyright law are always worth bearing in mind. This is true especially if the writer is a freelance journalist or columnist and dreams of syndication or publishing a collection of his or her work.

What follows, then, is a (highly subjective) round-up of ten tips for U.S. © consciousness:

1. From the moment any expression is fixed in form (written word and painted canvas are two traditional examples, but an electronic word processing file is considered “fixed” too), that work is immediately and automatically protected by copyright under U.S. and foreign law.
2. To be able to bring a suit against an infringer, however, does require having registered the copyright with the U.S. Copyright Office (www.copyright.gov), for which a \$45 fee is currently charged. Please note that, if you are a self-employed freelance journalist, the copyright registration on the newspaper in which the article is published will likely not protect your own work.

*This image (reference number LC-USZ62-5513) is in the public domain in the United States and possibly elsewhere. This is because its first publication was in the United States prior to January 1, 1923, or because its copyright expired in the U.S.

3. As an incentive for registering copyright, the law provides that attorney's fees as well as statutory damages (which, in cases where "actual damages" are too hard to prove, can rise as high as \$150,000 per infringement) may be paid in any successful court action for infringement if the registration occurred before the infringement.
 4. A person's name or the name of a product "brand" cannot be protected by copyright law, although these may be protected by trademark law. For more information, contact the U.S. Patent & Trademark Office (www.uspto.gov).
 5. Copyright ownership is not limited solely to the creators of works. For example, a writer may sign either a "Work For Hire" contract or an "All Rights" contract with a publisher or syndicate. In the first case, the employer is the "author" for purposes of copyright right from the beginning and the writer has no rights; in the latter, the original author initially holds copyright rights and transfers them to another person (but matters like the length of copyright term continue to be measured by the original author's life).
 6. On the other hand, a publisher or syndicate does not automatically acquire copyright simply by publishing material. Unless there is a signed contract to the contrary, the original author retains copyright ownership and the publisher or syndicate acquires only a license.
 7. A copyright holder may license specific forms of re-use to a variety of publishers or others. Such re-uses may include film rights, foreign language rights, and merchandising rights (e.g. action figures in the shape of a comic strip character).
 8. Contrary to the opinion of most teenagers, a Web site (in whole or in part) is almost always protected by copyright. This applies not only to text, but also to photos and illustrations.
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9. Unlike Web content, however, a domain name (e.g. www.beyondthebook.com) is not subject to copyright law. The Internet Corporation for Assigned Names and Numbers (ICANN) is responsible for overseeing the domain name system. Domain names can be registered for a fee with a variety of designated vendors, which are listed at www.icann.org. In addition, the ICANN Web site provides information about resolving domain name disputes.
 10. When copyright issues arise between writers and publishers, a variety of writer's organizations may be able to provide assistance through their contract dispute resolutions programs, including the American Society of Journalists and Authors (www.asja.org); the National Writers Union (www.nwu.org); and the Authors Guild (www.authorguild.org).
- Finally, because the law can change almost as often as Madonna's hair color, and is open to nearly as much interpretation as a Florida presidential election ballot, trust THIS advice most: always verify the currency and accuracy of any amateur copyright advice that you may receive with your editor, agent or attorney.

This report was prepared by Christopher Kenneally, Director, Author & Creator Relations, for the not-for-profit Copyright Clearance Center.

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