

# U.S. Copyright Law Glossary



Understanding our nation's copyright law is important, but also complex. The below glossary of key copyright terms is a resource to help promote informed discussions about copyright policy.

**COPYRIGHT:** An exclusive legal right given to the creator or an assignee of an original work of authorship that is fixed in any tangible medium of expression currently known or later developed. In the United States, a copyright is not dependent upon registration of the work. Exclusive owners of a copyright may provide a license to another party to create copies of the work. Protection does not extend to an idea, procedure, process, system, principle or discovery.

**DIGITAL MILLENNIUM COPYRIGHT ACT (DMCA):** The DMCA was passed by Congress in 1998 to update U.S. copyright law for the digital age. A forward-looking piece of legislation, it attempts to strike a balance between copyright holders, public interest groups, and consumers. This legislation is the foundational framework for limiting online copyright infringement while still accommodating innovation.

**DMCA SECTION 512 SAFE HARBORS:** Safe harbors refer to legal protections for those on the Internet that host, store, transmit, locate, or cache content uploaded by others. The ability of the Internet to help users create, share and access content depends on intermediary third parties—from Internet Service Providers (ISPs) to search engines to websites. These entities are able to perform their respective roles in the Internet ecosystem because they are not responsible for the countless documents, images or audiovisual works traversing the Internet at any given moment. As long as they comply with Section 512's rules, service providers and platforms cannot face copyright penalties for the actions of their users. Each service provider may have its own takedown policies, but it must follow the guidelines in Section 512 of the DMCA to gain the protection of the safe harbor.

**NOTICE AND TAKEDOWN:** Housed within section 512(c) of the Copyright Act, it is a process in which infringing content is reported by a copyright holder and the online service provider or Internet service provider removes it upon review.

**NEW CREATIVE ECONOMY:** The growing economic sector representing people who earn revenues on the Internet from posting and sharing their music, videos, art, crafts and other creative works on online platforms without going through traditional gatekeepers such as publishers, record companies and movie studios. In 2017, the American new creative economy was comprised of nearly 17 million independent creators who earned a baseline of almost \$6.8 billion.

**FAIR USE:** Fair use is a critical right that permits the public to use portions of copyrighted material without permission from the copyright owner, under certain circumstances, to engage in a wide variety of vital activities. It enables new technologies, and is a cornerstone of free speech, creativity and the economy. Fair use industries account for 16% of the U.S. economy and generate \$5.6 trillion in annual revenue. Examples of fair use include educational use, search engines, Internet memes, parody and quoting from a news article or academic study. Fair use also allows people to make entirely new uses of copyrighted works that courts and Congress have never contemplated. In the U.S., it is codified under Section 107 of the Copyright Act and has been interpreted broadly by our judicial system.

***The four factors used to determine if something is protected by fair use 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;
4. and the effect of the use upon the potential market for or value of the copyrighted work.

**PUBLIC DOMAIN:** The public domain includes creative works that are not subject to copyright because their copyright has expired, as well as aspects of copyrighted works—such as their underlying ideas—that are not subject to copyright. The public domain is a critical source of creativity, inspiration and innovation for creators. Works and ideas in the public domain belong to the public and their use does not violate copyright. Public domain works like Homer’s *Odyssey*, the Bible, and Shakespeare’s plays are the basis for modern storytelling, and even Hollywood has used the public domain to create countless works. For example, Mary Shelley’s *Frankenstein* has inspired everything from 2015 film *Ex Machina* to Mel Brooks’ *Young Frankenstein* to *The Munsters* to the “Monster Mash” song, along with dozens of books, video games, TV episodes and comic book characters. In 2002, prominent economists including Milton Friedman, Ronald Coase and Kenneth Arrow found that the public domain benefits the economy.

**DMCA SECTION 1201:** Section 1201 of the DMCA makes it illegal to circumvent technological protection measures (TPMs) on software and other copyrighted works. From cellphones to farm equipment, e-readers and iPads to video games, TPMs are software that prevents a user from copying or making changes to a work, even if those changes are lawful. For example, it is legal to make a copy of a DVD for personal use, but TPMs loaded onto the DVD prevents one from doing so; circumventing the TPMs is not lawful. Other recent examples where this has come into play include cellphone unlocking, making devices accessible for disability communities and the right to repair or alter a car with software. Under Section 1201, every three years (last conducted in 2018) the Copyright Office, in consultation with the National Telecommunications and Information Administration, reviews applications to allow circumvention of TPMs. Only the Librarian of Congress can approve the exemptions, which are then adopted for a three-year period before users must re-apply for another exemption.

**COPYRIGHT TERM:** The current length of a copyright for an individual is the life of the author, plus 70 years. For corporate works, the term is 95 years from first publication or 120 years from creation, whichever happens first. Copyright term plays an important role in our society and economy, and needs to be balanced between encouraging creation and moving works into the public domain.

**COPYRIGHT TROLL:** An entity that aggressively enforces copyrights for the purpose of making money through mass litigation or the threat of litigation. Similar to a patent troll, copyright trolls do not advance the Constitutional intent of copyright, which is to promote the progress of science and arts.

**STATUTORY DAMAGES:** Copyright law provides plaintiffs that register their copyrights with statutory damages, meaning they can recover damages from infringers—regardless of whether the rightsholders have suffered any actual injury. Statutory damages currently range between \$750 and \$30,000 for each work infringed on, and up to \$150,000 in cases involving willful infringement. Statutory damages are unpredictable, varying widely from case to case, and they can often lead to bankruptcy.

**LIBRARY OF CONGRESS:** The Library of Congress is the largest library in the world and serves as the main research arm of the U.S. Congress and the home of the U.S. Copyright Office. Home to 170 million works, it provides access to sources of knowledge and plays an important role in fostering creativity. Led by Librarian of Congress Dr. Carla Hayden, the Library is undergoing a modernization effort which includes a digital strategy to sustain and expand services to all users.

**COPYRIGHT OFFICE:** Housed within the Library of Congress, it is the official United States government body that maintains records of copyright registrations, and provides legal advice to Congress, the Judiciary, and federal agencies. The Copyright Office is not a federal agency subject to the Executive as it is housed within the Legislative branch.

**REGISTER OF COPYRIGHTS:** Appointed by the Librarian of Congress, the Register is the Director of the United States Copyright Office. Her duties include overseeing the Copyright Office's procedures and practices and establishing standards for the registration of copyrights. The Register also provides advice to Congress on copyright issues. The current Register of Copyrights is Karyn Temple.

**CONTENT FILTERING:** The practice of companies employing automated or human controlled filtering systems to take down or prevent upload of content that is believed to be infringing on a creator's copyright.