Scope of Copyright Protection

U.S. copyright law is “a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of ‘original works of authorship,’ including literary, dramatic, musical, artistic, and certain other intellectual works.”¹ Copyrighted works include, but are not limited to, printed articles from publications, TV and radio programs, videotapes, music performances, photographs, training materials, manuals, documentation, software programs, databases, and Internet pages. In general, the laws that apply to printed materials also apply to visual and electronic media. Examples include diskettes, storage drives, MP3 files, CD-ROMs and Internet pages. There is no restriction on the copying of federal statutes or regulations as they are not copyrighted and are in the public domain.² However, items published by state and local governments may be protected by copyright. Current U.S. law grants copyright protection even if works are not registered with the U.S. Copyright Office or carry the copyright symbol (©).³

Copyright grants the owner of the copyright exclusive rights to reproduce, distribute, perform, and display their copyrighted works, and create derivative works.⁴ Distribution is considered the sale or transfer of copies of the copyrighted work. Reproduction includes making a digital copy, forwarding an email, or making a print or scanned copy at a photocopier/printer/scanner. A digital copy includes saving or storing a copy to a firm drive, storage device, document management system (DMS), or intranet. Unauthorized reproduction includes making a copy (print, digital, or otherwise) in a manner that is beyond what is permitted under the Copyright

¹ UNITED STATES COPYRIGHT OFFICE, COPYRIGHT BASICS 1, http://www.copyright.gov/circs/circ01.pdf (reviewed May 2012).
² Id. at 5 (“Works by the U.S. government as not eligible for U.S. copyright protection.”).
³ Id. at 4, 8.
⁴ Id. at 1.
Act, if it is done without permission of the copyright holder and/or payment of royalties.

Unauthorized copying infringes a copyright holder’s rights and may open the firm to damages and penalties. The amounts involved can be substantial and can be levied on both the individual and the Firm.

**Fair Use**

Section 107 of the Copyright Act provides an exception for “fair uses” of copyrighted works.\(^5\)

Fair use permits the unlicensed use of copyright-protected works in certain circumstances. Section 107 sets out a four-factor test which must be used to determine if a use is fair. All four of the following factors must be considered when performing a fair use analysis:

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.\(^6\)

Case law has added many nuances to fair use analysis over the years, and it is recommended that you visit Copyright.gov to gather more information and access case law discussing fair use analysis.\(^7\) Generally, a use is more likely to be fair if it is for criticism, comment, news reporting, teaching, scholarship, or research. While the inquiry is fact-specific, it should be generally assumed that most copying at a law firm will not qualify as fair use unless it is for judicial proceedings or submission to a government agency.\(^8\)

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\(^6\) Id.
\(^8\) Nimmer on Copyright § 13.05(D)(2) (“Works are customarily reproduced in various types of judicial proceedings . . . and it seems inconceivable that any court would hold such reproduction to constitute infringement either by the
Library and Archives Exemption

The library may request items from other libraries under the exceptions for libraries and archives contained in Section 108 of the Copyright Act. The Commission on New Technological Uses of Copyrighted Works (CONTU) developed guidance on the application of the Section 108 exception in libraries. The CONTU guidelines suggest that a library subscribe to a journal title if:

a) it requests photocopies of articles published in the periodical within five years prior to the date of the request

b) six or more times within a given calendar year.

Copyright Clearance Center

The firm may have a license with the Copyright Clearance Center (CCC) that enables employees in the United States to lawfully reproduce and distribute content, in print [or electronic ]format, as needed within the firm. Under the license firm employees can photocopy excerpts from newspapers, magazines, journals, and other copyright-protected works licensed by the CCC as often as needed. Please note that the CCC does not represent the entire universe of copyrighted works. Many online or specialty publishers are not covered by the CCC, and it is up to the individual to determine if the item is licensed by the CCC. A search tool to check the CCC’s database of registered works, including trade; newspaper; and magazine titles, is available at

government or by the individual parties responsible for offering the work in evidence.


9 Id. at 11, 20 (“As long as the library or archives meets the criteria in section 108(a) and the other requirements of the section, including the prohibitions against multiple and systematic copying in subsection(g) . . . the isolated, spontaneous making of single photocopies by a library or archives in a for-profit organization without any commercial motivation, or participation by such a library or archives in interlibrary arrangements, would come within the scope of section 108.”).

www.copyright.com in the upper right hand corner of the website. If the title falls under the CCC’s license, employees can e-mail articles of interest to other employees, post articles on our intranet sites, and scan content when a digital original is not available. Please note that the rights provided are for use internally at the Firm and may not extend to clients and others outside the Firm.

Federal and State Primary Documents

Most federal government works, including statutes, regulations, and case law, are not subject to copyright and are in the public domain.11 State and local governments may claim copyright protection on their works. Additionally, copyright attaches to editorial additions to primary documents, such as annotations to statutes in the United States Code Annotated.

International Copyright Law

Each country has its own copyright laws.12 There is no worldwide single body or organization that protects a copyright holder’s rights or provides exemptions for copying. However some countries have entered into international conventions or treaties to mutually respect each other’s copyright laws. This means that countries that are signatory to one of these copyright agreements will offer the same protection to foreign copyright holders as they give to their own copyright holders.

The CCC and most other licenses cover domestic use only. In rare instances where one may consider copying outside the United States one cannot assume that the Firm’s U.S. licenses apply, and one may need to have an understanding of the exemptions and permissions allowed under a specific country’s copyright laws.

11 17 U.S.C. § 105 (“Copyright protection under this title is not available for any work of the United States Government...”).
Other Sources for Guidance on Copyright Law

- Copyright Office Circulars/Brochures, http://copyright.gov/circs/
- Stanford Copyright and Fair Use Center, http://fairuse.stanford.edu/