

Maximizing the Online Economy & Making the Most of Your Copyrights

Part 1: Music

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HASS LAW_{LLC}



Disclaimer: Education, Not Advice!

PLEASE NOTE: This workshop is an overview of certain areas of copyright and contract law, and is intended for educational purposes only. This class will not provide legal advice. If you have a specific legal problem, you should consult an attorney directly in a one-on-one session where communication is confidential. The workshop instructor may be able to schedule a consultation with you, or put you in touch with other attorneys who can help, if needed.

About Me

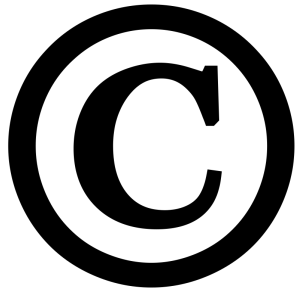
Max Hass

- Entertainment Attorney & Musician
 - Founded Hass Law in 2017 in New Orleans, relocated to Denver in October 2019
 - J.D. from Tulane University
- Primary clients: musicians & producers, filmmakers, photographers, painters, illustrators, and writers
- Previously worked as artist manager, booking agent, and concert promoter

Agenda

1. Copyright Overview
 - What a copyright is, what's eligible for © protection
 - Authors & Owners
 - Joint authorship & co-ownership
2. Important contract concepts
 - Work for Hire & Independent Contractor Agreements
 - Assignment & License
3. Copyright Registration
4. Maximizing your online income
 - ASCAP, BMI, SESAC, and SoundExchange
 - Licensing: Production Music Libraries, Music Supervisors, Publishers
 - Hard-to-collect royalties: Songtrust, TuneCore, and other services

Intellectual Property: More than just Copyright



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TM ®

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Copyright

Trademark

Patent

Three basic types of Intellectual Property

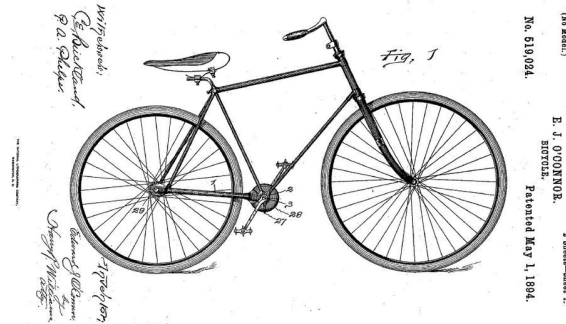


Copyright

VS.



VS.



Trademark

Patent

What is a Copyright?

- A form of property - can be bought/sold and “rented out” (licensed)
- Separate and distinct from the artwork itself
- Governed by federal (not state) law
- Comes into existence at same time work is completed
- Owner has a set of exclusive rights for a limited period of time
 - Artist’s lifetime plus 70 years

Exclusive Rights of a Copyright Owner

1. **Reproduce** (make copies of) the work
2. **Distribute** those copies (by sale, lease, licensing, donation, etc.)
3. **Create and/or Authorize Derivative Works**
4. **Publicly Display** the work
 - for works that can be “displayed”
5. **Publicly Perform** the work
 - for works that can be “performed” - BUT does not apply to sound recordings!
6. *For sound recordings only*: **Publicly Perform via Digital Audio Transmissions**
 - Streaming and Internet Radio

Types of Works Eligible for Copyright Protection

1. **Literary Works:** books, poems, magazines, computer programs, directories, and more
2. **Musical Works (non-dramatic):** music & lyrics
3. **Sound Recordings**
4. **Dramatic Works:** stage plays, musicals, scripts, screenplays
5. **Pictorial, Graphic, and Sculptural Works:** all 2D and 3D visual art (including digital graphics and photographs), maps, and technical drawings
6. **Audiovisual Works:** films & videos
7. **Choreography & Pantomime**
8. **Architectural Works**

Threshold Requirements

1. An original work of authorship,

- Must possess some minimum degree of creativity
- Must be a human author

2. Fixed in a tangible medium of expression.

- Must exist for more than a short time

When do you get a copyright?

The moment the work is fixed in a tangible form.

- Sketches, demos, rough cuts, etc. are enough - the work does not need to be final draft in order to receive copyright protection.
- Registration not required, but still very important for other reasons.

What Can't be Copyrighted?

- Ideas or concepts still in your head (not fixed)
 - Familiar symbols (square, circle, arrow, etc.)
 - Basic listings of contents or ingredients (no originality)
 - Mere variations of typographic ornamentation/lettering/coloring (no originality)
 - The layout, format, or “look and feel” of a web page
-
- Procedures, processes, systems, principles, or discoveries
(covered by patent law)
 - Functional design elements & useful articles **(covered by patent law)**
 - Titles, names (including domain names/URLs), short phrases, slogans
(covered by trademark law)

Important Terminology:

“Author” and “Owner”

- “Author” = any person who makes a non-trivial creative contribution to the work.
- Anyone who counts as an author of the work is automatically an owner of the copyright in that work.
- “Owner” = the person(s) or company with control over the work - has authority to monetize and make decisions about the work.
- Multiple authors —▶ Co-owners w/ equal shares
- Ownership & co-ownership can be modified by contract

The Simple Case: One Author

- Author is the only owner of copyrights & has exclusive control over the work
- Exercise all of the core rights and collect royalties
- Issue licenses or sell your rights (via “assignment”)

Multiple Authors: Scenarios

1. True collaboration: “co-authors in a joint work”
 - Two songwriters write a song together
2. Artist / Project Leader hires help
 - Bandleader hires studio musicians for a recording session
3. Company or Art Patron commissions artist to create something

Multiple Authors:

1. True Collaboration

- Are you “co-authors in a joint work”?
- **Joint Work:** two (or more) artists create a work with the intent to merge their contributions into one inseparable work.
 - Each contribution must be independently copyrightable
 - All parties must fully intend to be collaborators
- Co-authors will automatically be co-owners of the copyright, unless they have a contract stating otherwise.

Effect of True Collaboration: Co-ownership of Copyright

- Each author/owner owns the copyright in equal shares
- Co-owners have right to use and enjoy full benefits of copyright ownership (some exceptions)
- CAN collect 100% revenue, but must account to co-owners
- CAN grant non-exclusive licenses, but
- CAN'T grant exclusive licenses or assign rights w/o permission of other co-owners
- CAN'T sue each other for infringement

Multiple Authors:

2. Artist Hires Help

- Artist is in charge of the project, but needs other people to help execute it.
- **Without a contract, law will most likely treat you as co-authors (and thus co-owners).**

Multiple Authors:

3. Company/Patron Commissions Artist

- Artist is hired to create a work at the direction of a third party.
- Work for Hire doctrine might apply
 - If hiring party is a company, are you an employee?
- **Without a contract, the artist will usually be the author (and thus owner), regardless of what the hiring party thinks.**

Work For Hire Doctrine

- Artist works for a 3rd Party to create a specially commissioned work.
- Requirements for WFH doctrine to apply:
 - a. Artist is W-2 Employee and has created work w/i scope of employment, OR
 - b. Artist is an independent contractor, and:
 - Commissioned work falls into one of nine statutory categories, AND
 - Artist signs a written contract that includes the words “work made for hire.”
- Effect of WFH: the hiring party is considered the author of the work, and thus the owner of the copyright. If WFH doesn't apply, hiring party can still get copyright ownership through an assignment contract.

Exclusive Rights of a Copyright Owner

1. **Reproduce** (make copies of) the work
2. **Distribute** those copies (by sale, lease, licensing, donation, etc.)
3. **Create and/or Authorize Derivative Works**
4. **Publicly Display** the work
 - for works that can be “displayed”
5. **Publicly Perform** the work
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6. *For sound recordings only*: **Publicly Perform via Digital Audio Transmissions**
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Contracts & Copyright

- Before/during creation of the work: establishing clear “chain of title”
 - Contracts with hired help and/or collaborators
 - Contracts between artist and commissioning party
- After creation of the work: monetizing the copyrighted work
 - Licenses
 - Assignment (sale) of copyright

Contracts for “Clear Chain of Title”


- Studio Musician Agreements, Co-Write Agreements, Producer Agreements, Split Sheets
 - Contain copyright assignment clauses
 - Allocate authorship credit
 - Who has administrative rights?
 - Terms for up-front payments and back-end royalties
- Commissioned projects: employment agreement or independent contractor agreement
- With clear chain of title, you can make deals with the larger industry players.


Contracts to Monetize Copyrights


- License agreements: synch, samples, music libraries, etc.
- Record deals, Publishing agreements
 - Usually contain assignment clause
 - Labels take 100% of sound recording copyright
 - Publishers take 50% of musical composition copyright


Copyright Registration:

www.copyright.gov


 [About Us](#) [News](#) [Law and Guidance](#) [Policy Issues](#) [Contact Us](#)

**Register**
Register a Copyright

**Record**
Record a Document

**Research**
Research and Certification

RESOURCES

**Search Copyright Records**
Search the Copyright Public Records Catalog online. 1978 to present.


DMCA Designated Agent Directory
Service Provider Designation of Agent

Schedule of Fees
Fees for Registration, Recordation, and Other services

Archive of Briefs and Legal Opinions
Legal guidance on questions of copyright law

Statutory Licensing

EDUCATION

**Fair Use Index**
A searchable database of court opinions to make the principles and applications of fair use more accessible and understandable

Frequently Asked Questions
Answers to common questions about copyright

History and Education
Learn about copyright history and search historical documents and publications

Copyright Events
Events of the Copyright Office

Copyright Quick Links

Copyright Law of the U.S.
Title 17 of the U.S. Code


Code of Federal Regulations
Title 37, Chapter II

Compendium of U.S. Copyright Office Practices
Third Edition

Latest News

Copyright Office Reports Results of Public Inquiry on Mass Digitization Pilot Program

Registration Portal

Important Note: You may register up to 10 unpublished works on the same application, but **YOU MUST SELECT** the new application for a "Group of Unpublished Works." 

Click here if you need help finding the application for a "Group of Unpublished Works," and **click here** to watch a video that provides step-by-step instructions for completing this application.

The "Standard Application" **MAY NOT BE USED** to register a "collection" of unpublished works. If you submit 2 or more unpublished works on the "Standard Application" the Copyright Office will examine, and if appropriate, register only 1 of your works. All remaining works will be removed from the claim; to register those works you will need to resubmit them using an appropriate application form.

Welcome to the Registration Portal. This is your starting point for all things related to the registration of copyrights. Choose a category below to find out more about the different works typically registered with the U.S. Copyright Office.

[Log in to the Electronic Copyright Office \(eCO\) Registration System](#)

[Registration Processing Times and FAQs](#)

Electronic Copyright Office (eCO)

United States Copyright Office
Library of Congress

User Login

If you are a registered user, please login here.

User ID: *

Password: *

Login

[Forgot Your Password or User Id ? / Reset Your Password ?](#)

[If you are a new user, click here to register.](#)

Welcome!

Welcome to the Electronic Copyright Office (eCO)

You may now use this website to:

- Register your work
- Preregister your work if you [fulfill the requirements](#).

Submit electronic works to comply with a Notice for Mandatory Deposit

NOTE: The eCO System has been confirmed for use with the Firefox browser on the Microsoft Windows 7 Operating system.

Other browsers such as Internet Explorer, Chrome, Safari and Netscape (as well as out-of-date browsers) may work but potentially could show less than optimal behavior when used with the eCO System.

To view and print documents you will need the Adobe Acrobat Reader installed on your system . ([click here to download](#)).

Why Register a Copyright?

- Very strong proof of ownership & essentially required if you want to get a record or publishing deal
- Required before filing a copyright infringement lawsuit.
- Eligible for Statutory Damages & Attorney's Fees if work is registered promptly after publication.
- Registration fees range from \$45 to \$65 - very cheap insurance!
- “Poor Man's Copyright” doesn't work
- NOTE: this is not the same as registering music with ASCAP or BMI

www.copyright.gov (not .com!)

What You Need to Register a Copyright

- Clear understanding of Authorship & Ownership of the work
 - If you used contracts or WFH to obtain © ownership from another person, you need to tell Copyright Office what method you used
- Date of creation, and date of publication of the work
- Info for each author (regardless of whether they're owners):
 - Name, country of citizenship/domicile, year of birth
- Info for owner ("claimant"): name, address, phone, email
- Registration fee
- Copy of work to deposit with Copyright Office

Maximizing Revenues from Your Copyright Online

- **Performance Rights Organizations (PROs):** collect royalties from public performances of musical compositions
- **SoundExchange:** collects royalties from digital public performances of sound recordings
- **Mechanical Royalties:** derived from musical compositions - use a publishing administration service to collect
- **Synch Licenses & Production Music Libraries**
- **Digital Distribution:** get up on streaming and download services



- **Collect royalties:** venues, radio stations, restaurants, hotels, etc. pay annual fee (“blanket license”) to get access to each PROs’ entire catalog
 - AM/FM radio
 - Background music in venues, restaurants, bars, hotels, etc
 - Live performances (your own and other people’s covers of your songs)
 - Television broadcasts
 - Foreign movie theaters (but not U.S.)
 - Internet streaming services (both interactive and non-interactive)
- **Distribute royalties:** to Songwriters and their Publishers based on the Songwriter’s % ownership of the Composition

Info for Joining a PRO

- **ASCAP:** American Society of Composers, Authors, and Performers
 - \$50 to join as songwriter / \$50 to join as publisher
- **BMI:** Broadcast Music, Incorporated
 - Free to join as Songwriter / \$150-250 to join as publisher
 - Has a separate Classical Division
- **SESAC:** Society of European Stage Authors and Composers
 - Membership by invitation only, but no membership fee
 - For-profit
- Songwriters can only be a member of one PRO at a time!
 - Long, difficult process to switch or cancel membership
 - Publishers can have accounts with multiple PROs

Getting Paid from a PRO

- Step 1: Create Account with ASCAP, BMI, or SESAC
 - By signing up, you grant the PRO a broad license to public performances of your musical composition copyright, so that they can re-license public performances to third parties
- Step 2: Register each of your songs with your PRO
 - Writer's Share & Publisher's Share
 - Multiple Songwriters: assign % for each Writer and each Publisher - use split sheet, and be sure to get co-writers' IPI number to correctly ID them
- Step 3 (optional): Sign up for BMI Live / ASCAP OnStage
 - Requires bank account info for direct deposit
 - Create pre-saved setlists with your registered songs
 - Report details of your gigs - date, venue, setlist
 - You can report up to the past 6 months' shows, so it's never too late to submit

SoundExchange: a “PRO” for Masters

- Sound Recordings only have a limited public performance rights:
 - Digital Audio Transmissions (streaming -- both “interactive and non-interactive”)
 - **SoundExchange collects non-interactive only**
- Free to join: register.soundexchange.com
- Sign up as: individual artist or band, copyright owner (e.g. label), or both
 - Can also sign up as an heir to a deceased artist who never claimed back royalties
- Royalties paid to Featured Artists and Backing Musicians & Vocalists
- Partnerships with foreign counterparts to collect royalties in 35 other countries around the world, from over 3,100 streaming services
- Collecting royalties for years, even without Performers signing up - there could be years of back royalties waiting for you



soundexchange

Some Streaming Royalties Aren't Collected by PROs

- Masters: interactive streaming royalties derived from masters are collected by labels and distributors
- Compositions: mechanical royalties are not collected by PROs, only by publishers or other service providers
 - Songtrust specializes in collecting hard-to-collect royalties
 - TuneCore has publishing administration service
- Musicians who feature in films or compose music for films may have access to collective funds:
 - AFM/SAG-AFTRA Musicians Fund: <https://www.afmsagaaftrafund.org/>
 - Film Musicians Secondary Markets Fund (for DVD sale-related royalties, etc.): <https://www.fmsmf.org>

Digital Distributors

- Also called “Aggregators” - distribute your music to multiple platforms all at once
 - CDBaby, TuneCore, Distrokid, iMusician, AWAL (invitation only), Spotify For Artists (beta; direct-upload), etc.
- Different pricing plans: some only charge flat fees, some take % of royalties, some require annual subscription
- Do your research before deciding: once you sign, distributor will have quite a bit of control over your work
 - Be aware of any exclusivity provisions that could affect your ability to contract w/ other music industry players

Mechanical Royalties

- Mechanical Royalties (“Mechanicals”): owed to Songwriter and/or Publisher
 - Different from Public Performance Royalties and NOT collected by PROs
- Earned every time song is streamed, downloaded, or a physical copy is sold (any recorded version, including covers)
- Downloads & Physical Sales: Label or Recording Artist owes mechanicals to Songwriter/Publisher
- Streams: independent songwriters can’t collect mechanicals on their own
 - Publishing deal - publisher will definitely collect mechanicals
 - Add-on packages from your Digital Distributor (e.g. CDBaby Pro, TuneCore Pub. Admin.)
 - Publishing Admin-Only deals (e.g. SongTrust, Audiam)

Resources & More Info, pt. 1:

- U.S. Copyright Office Circulars: copyright.gov/circs
 - Circ. 9 addresses Work for Hire: copyright.gov/circs/circ09.pdf
 - Circs. 50, 56, and 56a address music & sound recordings
- Fair Use Index: copyright.gov/fair-use/fair-index.html
- Musicians: *All You Need to Know About the Music Business* by Donald Passman
- NOLO: nolo.com/legal-encyclopedia/contracts
- Legal Information Institute: law.cornell.edu/wex/contract

Resources & More Info, pt. 2:

- Future of Music Coalition has great infographics breaking down the flow of money in the internet-music economy: <https://futureofmusic.org/>
 - <http://money.futureofmusic.org/revenue-streams-existing-expanded-new/>
- Ari's Take Blog - "How to Get All Your Royalties":
<https://aristake.com/post/what-is-soundexchange-ascap-bmi-pros-hfa-mechanicals-and-how-to-get-all-your-royalties>
- Full List of Digital Services from whom SoundExchange collects:
<http://www.soundexchange.com/about/our-work/facts-figures/>
- *Music Money and Success: the Insiders Guide to Making Money in the Music Business* by Jeffrey and Todd Brabec
- Your local entertainment or intellectual property attorney

Thanks to:



CBCA.org

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