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U.S. Government Works Containing Copyrighted Material

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No copyright protection is available for U.S. Government works under 17 U.S.C. 105. But the Government is not precluded from holding copyrights transferred to it "by assignment, bequest, or otherwise." (Id.)

Such transfers may include outright sales. Sales must include the execution of an instrument of conveyance signed by the conveying owner (17 U.S.C. 204(a)). If a Government agency purchases a private copyright, that agency acquires all the rights incident to ownership.

A Government agency can also acquire lesser rights to copyrighted material by contract. Contractual rights, i.e., copyright licenses, specify the terms (time, use, media, etc.) under which one or more copyrighted items (often photographic images) are leased. Terms are generally negotiable. Either exclusive or nonexclusive rights may be acquired this way.

Governmentally, copyright issues often arise in connection with the purchase of graphics or images for use in publications.^{1/} Licensed images used in either print or on-line digital Government publications must be identified as such when published by a copyright notice. Such notices generally have the copyright symbol (the letter "c" in a circle), the copyright year, the name of the copyright owner plus a permission granted statement (17 U.S.C. 403).

This provides the world with notice of private property rights, and can transform subsequent use(s) of the image without permission to knowing and willful infringement. Willful infringement, for example by unauthorized copying, permits the owner to recover actual damages, including lost "profits," or statutory damages of up to \$100,000 per willful infringement, plus legal fees (17 U.S.C. 504 (c)(2)).

Statutory damages for unintentional infringement range from \$500 to \$20,000 per violation, "as the court deems just" (17 U.S.C. 504 (c)(1)).

The copyright owner can elect to recover statutory damages at any time during a trial before the court renders its final judgment. (H.R. Report No. 94-1476, pp. 161-163).

^{1/} Many private organizations can be found on the internet which license copyrighted images (e.g., ImageState, Map Resources, EclectiCollections).

Because of the Government's inability to copyright (17 U.S.C. 105), people sometimes assume that the appearance of an image in a federal publication makes it available for use by anyone. That is, of course, not true when the image is privately copyrighted. Under such conditions, and absent a qualifying "fair use,"^{2/} it is necessary to obtain permission to use it.

The same rule applies to federal agencies who desire to use a licensed image (e.g., to make and distribute photocopies or use them in a different publication). It is therefore necessary, in these cases, for the potential user to check into the terms of the original license to determine whether the new use is permitted or not. If not authorized under the original license, or by law, either an amendment to that agreement or a new agreement must be negotiated - and that should happen prior to the new use.

Permission to re-produce or photocopy copyrighted material can be obtained from the owner directly or from a licensing representative such as Copyright Clearance Center (CCC). CCC is a not-for-profit company formed in 1978 to provide a mechanism for the exchange of permissions and royalties. CCC currently acts as an agent for more than "9,600 registered publishers and hundreds of thousands of authors and creators worldwide."

(<http://www.copyright.com/Help/HelpGovernmentFAQ.asp> (See answer to FAQ Q9.)

In conclusion, it should be noted that no copyright infringement can occur for "reception [of copyrighted material] by officers or employees of governmental bodies as a part of their official duties or employment." (17 USC 110 (2)(C)(iii)). "Reception" by government employees is permitted, but further unauthorized distribution(s) to others who may not be government employees is not.

^{2/} The four "interests" of the fair use defense (17 U.S.C. 107) are not always easy to apply (1. purpose and character of use, 2. nature of copyrighted work, 3. proportion taken and 4. economic impact of taking). However, if one's use is within its parameters, there is no copyright infringement.