



COPYRIGHT IN TEST DEVELOPMENT

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What is my role?

- ▲ Managing Editor
- ▲ Perform psychometric and grammar edits
- ▲ Obtain copyright documentation

Overview

Description

Although obtaining official copyright from the United States Copyright Office provides important legal protection, it is a public process that must be balanced with maintaining the security of test items. This webinar will provide advice and guidance on best practices to ensure that test items remain secure while meeting the requirements of the Copyright Office. Additionally, a discussion will occur regarding how to obtain copyright on databases and computerized test forms. Lastly, a hands-on, practical discussion will occur to provide guidance on how to incorporate applying for copyright protection into the test development process.

Topics Will Include

- Advantages of obtaining official copyright
- Requirements of the United States Copyright Office to issue copyright
- How the procedure for obtaining copyright differs for secure tests
- Safeguards for maintaining item security
- Best practices for submitting a successful application for copyright protection
- How to obtain official copyright while using borrowed material in test content

How long does copyright last?

- ▲ 95 years from publication or 120 years from creation, whichever comes first



Is copyright law international?

- ▲ International treaties extend protection
- ▲ See Circular 38A for more details



What are advantages of copyright?

- ▲ Official copyright means ownership is a basic fact before litigation occurs.



What isn't included in copyright?

- ▲ Formatting
- ▲ Public domain
- ▲ Borrowed material
- ▲ Un-original content



What are disadvantages of copyright process?

- ▲ Copyright is a public process
- ▲ Need to balance security



Why is copyright important?

Limits ability of others to:

- ▲ reproduce
- ▲ distribute
- ▲ display
- ▲ create derivative work

Best practices

- ▲ Document process
- ▲ Post prominent notice of copyright ownership
- ▲ Monitor items for borrowed material (e.g., images)
- ▲ Obtain official registration from US Copyright Office using secure test process

What should a notice include?

- ▲ “Copyright © year copyright holder”
- ▲ Recommendation:
Place notice in a prominent place



When should you file an application?

- ▲ Visit should occur just before forms “go live”
- ▲ You can schedule your visit any time after you submit your application
- ▲ Reduces likelihood of exposure to content
- ▲ Copyright needs to be made on the most final version of assessment

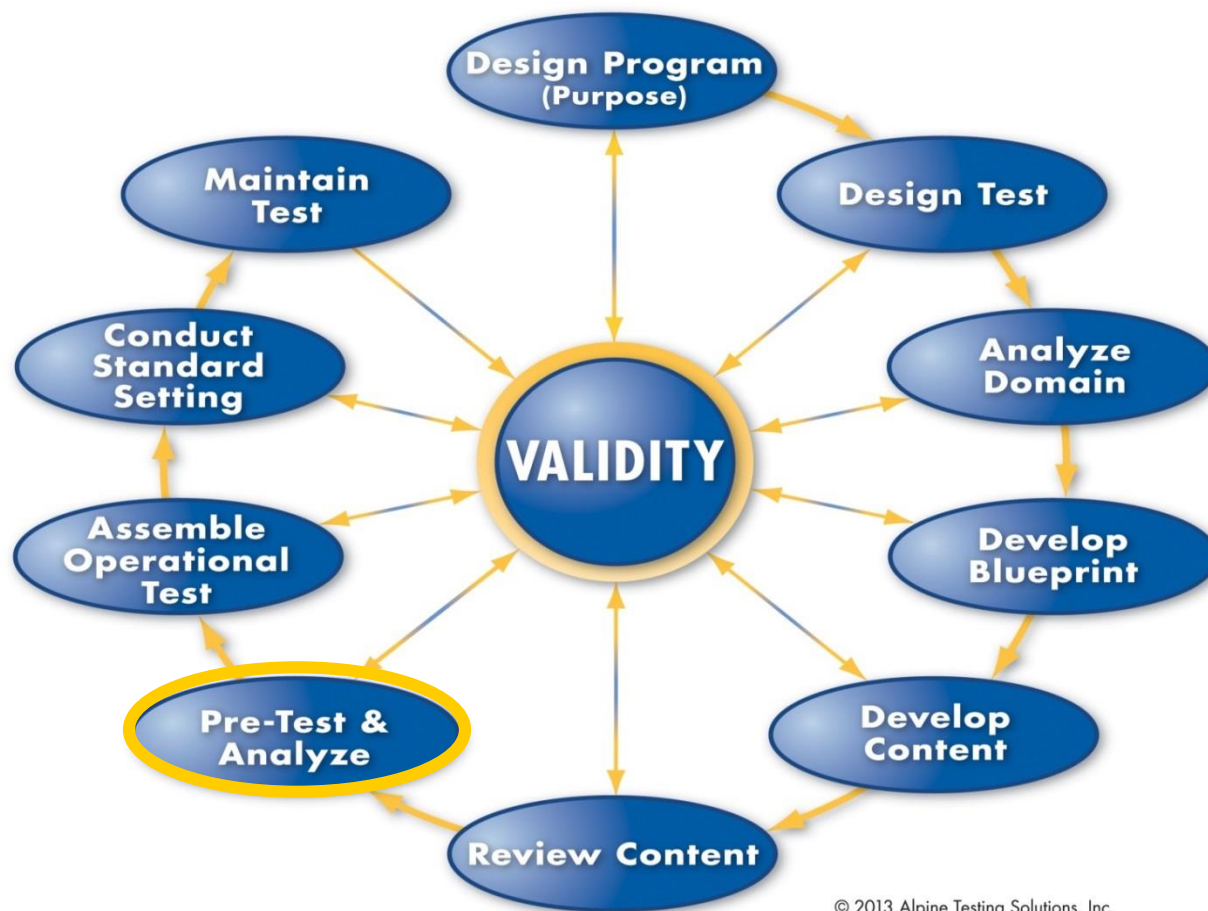
How long will it take?

- ▲ Processing times vary depending on how many applications the Copyright Office receives at a given time, but generally 8 weeks from date of visit to Copyright Office for secure tests
- ▲ eCO has shorter processing times (3 to 5 months versus 7 to 10 months for non-secure materials)

When is effective copyright date?

- ▲ Copyright is effective on the date the Copyright Office receives the complete application
- ▲ For secure tests, this date is the date of the visit to the Copyright Office

Where does copyright fit in?



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How can you be proactive?

- ▲ Make sure agreements with SMEs grant the copyright to you as a “work for hire”
- ▲ Have the right item writing tools so that item writers have a field where they can provide the source of each image
- ▲ Have standards in place so you can easily identify borrowed content
- ▲ Encourage item writers to use original content wherever possible

How can you maintain security?

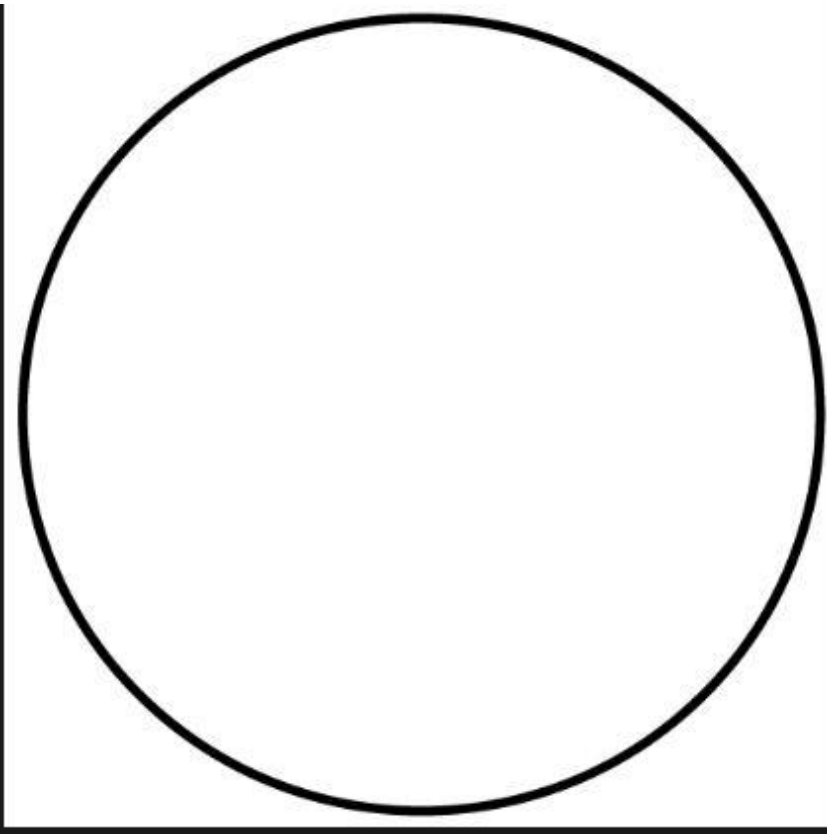
- ▲ Have the right tools in your tool box
- ▲ Have laptops encrypted
- ▲ Follow US Copyright Office procedures for secure tests

Requirements for copyright

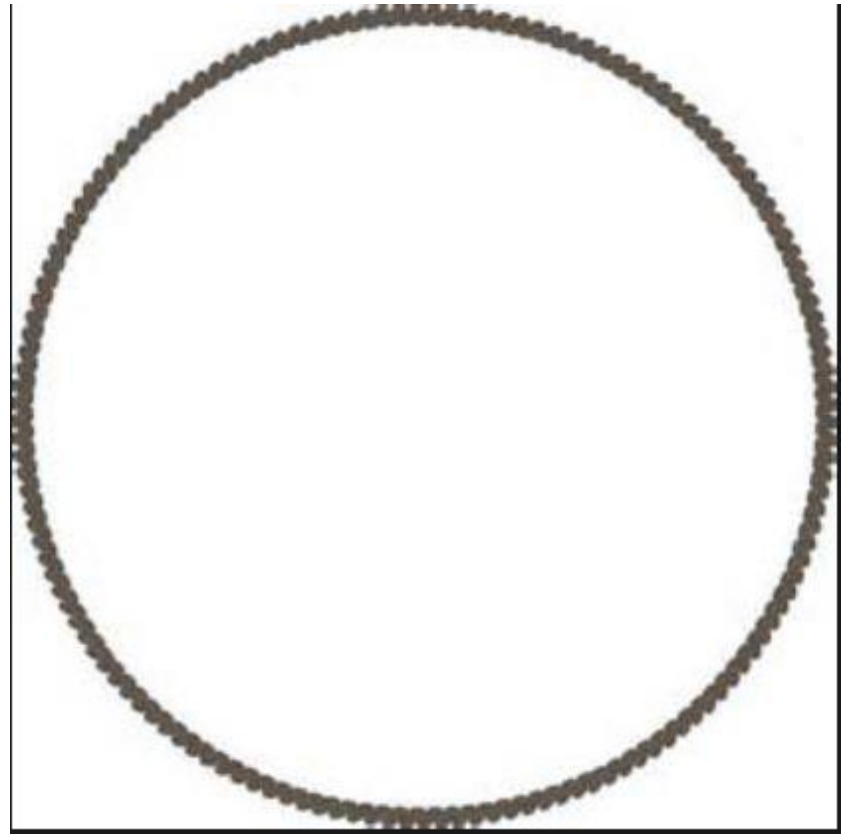
- ▲ Originality: minimal degree of creativity
- ▲ Fixation: not as easily defined in today's technology

Requirement #1: Originality

Not original



Original? Maybe.



Requirement #1: Originality

- ▲ *Feist* (1991): Supreme Court ruled that information alone without a “minimal creative spark” can not be copyrighted



Requirement #1: Originality

- ▲ *Ets-Hokin* (1991):
Photographs
generally satisfy the
originality requirement
because of choices in
lighting, angle etc.

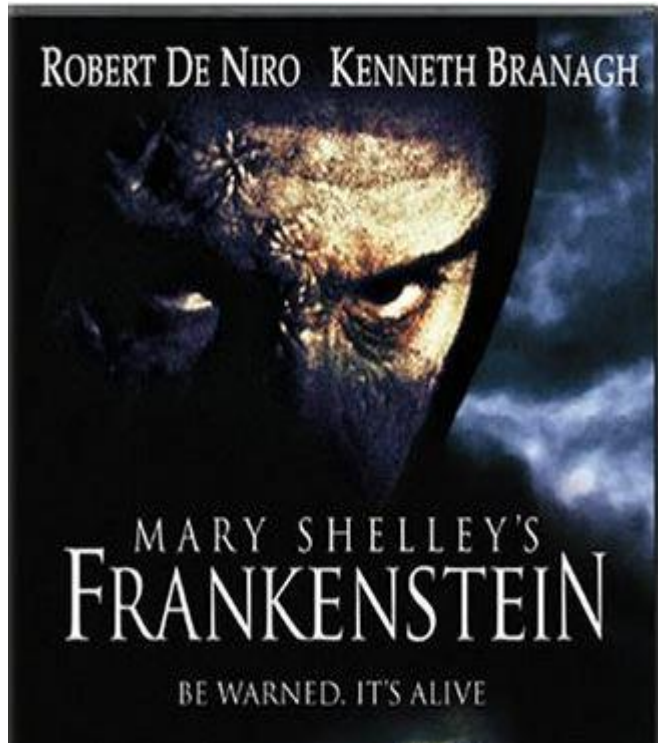


When can you use borrowed material?

- ▲ Lack of originality
- ▲ Public domain
- ▲ Fair use

Public Domain

Public Domain



NOT Public Domain



What is fair use?

- ▲ Four-prong case-by-case test:
- ▲ Purpose of the use
- ▲ Nature of the copyrighted work
- ▲ Substantiality of the work used
- ▲ Effect on the market

Requirement #2: Fixed

- ▲ Once the item writer types the item into the item writing tool



The Copyright Office

Copyright Office

Below is information on how to view and obtain Copyright Office publications and records. Publications are available on the Copyright Office website. Many are available in paper format by request. Copyright Office records in machine-readable form cataloged from January 1, 1978, to the present, including information on copyright registrations and recorded documents, may be searched and examined on the Copyright Office website. Certain historical documents may be viewed and downloaded from www.copyright.gov/history/.

- WEBSITE: www.copyright.gov
- U.S. POSTAL SERVICE: Request publications by writing to the following address:
*Library of Congress
Copyright Office–COPUBS
101 Independence Avenue SE
Washington, DC 20559*
- FORMS AND PUBLICATIONS HOTLINE: If you know which application forms and circulars you want, request them 24 hours a day from the Forms and Publications Hotline at (202) 707-9100. Leave a recorded message.

Copyright Matters

 **Copyright.gov**
UNITED STATES COPYRIGHT OFFICE
a department of the Library of Congress

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Copyright Matters Lecture Series

About

The Copyright Matters lecture series was founded by Register of Copyrights in 2011 as a community forum to discuss the practical implications of copyright in the 21st century and to provide education and training to the staff of the U.S. Copyright Office. The series, a wide range of invited speakers – including Congressional leaders, industry experts, and legal scholars – present topics of critical importance to the copyright community. The series occurs throughout the year at the historic Library of Congress and includes topics such as authorship, copyright registration, marketplace investment, copyright enforcement, international norm setting, orphan works, and other updates and revisions to copyright law in the digital age.

Read the Compendium

Read the Regulations

Read the Copyright Law

Annual Reports

Circulars

Factsheets

Forms

Historical Documents

Active Policy Studies

Priorities Document

Register's Speeches

Events

April 23, 2014

2014

2013

2012

2011

Re-Organization of Copyright Office

- ▲ Appointed Director of Public Information and Education (September 17)
- ▲ Appointed first Public Information Officer
- ▲ Goal: “successfully navigate the copyright technology landscape of the 21st century”

How does copyright office communicate?

- ▲ <http://copyright.gov/circs>
- ▲ Circular 1: Copyright Basics
- ▲ Circular 9: Works Made for Hire
- ▲ Circular 38a: International Copyright Relations of United States
- ▲ Circular 64: Copyright Registration for Secure Tests
- ▲ Circular 65: Copyright Registration for Automated Databases

THE APPLICATION

Part 1: The online form

Advantages of eCO

- ▲ Lower application cost
- ▲ \$55 online; \$85 paper
- ▲ Faster processing times
- ▲ Ability to track status of application
- ▲ Email confirming receipt of application
- ▲ Secure payment

Resources on eCO

Recommended Reading

[eCO Acceptable File Types](#)

[eCO Tips](#)

[eCO FAQs](#)

[eCO Tutorial \(PowerPoint\)](#)

[eCO Tutorial \(PDF\)](#)

[eCO Updates](#)

How do you use eCO?

Copyright

United States Copyright Office

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 ? / Reset Your Password ?](#)

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

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: eCO is compatible with Internet Explorer and Firefox (Windows or MAC OS).

Google Chrome and Safari are NOT currently certified for use with the eCO system.

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

What information do you need?

[eCO Navigation Tips](#)

Links	Completed
 Type of Work	
Titles	
Publication/Completion	
Authors	
Claimants	
Limitation of Claim	
Rights & Permissions	
Correspondent	
Mail Certificate	
Special Handling	
Certification	
Review Submission	

Continue >>

Save For Later

These are the types of work available in claim registration. Click on a Type of Work listed below for more information about each type.

[Literary Work](#)

[Work of the Visual Arts](#)

[Sound Recording](#)

[Work of the Performing Arts \(includes music, lyrics, screenplays, etc.\)](#)

[Motion Picture / Audio Visual Work](#)

[Single Serial Issue](#)

[Works that include more than one type of authorship.](#)

[Click here](#) for information on what may be included on a single application.

Select "Type of Work" that you are registering.

Type of Work cannot be changed after you click "Continue." [Click here](#) for more information.

* Type of Work:

Item Bank vs. Form

- ▲ The decision whether to copyright the item bank or the form is specific to your processes for item development and publication.
- ▲ Once a change is made to any item in the bank, the copyright no longer holds. If you are constantly revising items, copyrighting the bank is not for you.

Author

- ▲ Author: Per client agreement
- ▲ Work made for hire: Yes
- ▲ Citizen of: United States



“Author created”

“Author created”

- ▲ New and revised text and artwork

“material included”

- ▲ New and revised text and artwork



What to exclude

- ▲ “preexisting” artwork



Limitation of Copyright Claim

- ▲ Material can not be copyrighted twice
- ▲ “previously registered text and artwork”



THE APPLICATION

Part 2: The visit

How should you contact the Copyright Office?

- ▲ After submitting your application online, call the Literary Division at (202) 707-8250
- ▲ Appointments can be made between 10 am and 2 pm on Tuesdays through Thursdays.

What is the purpose of the visit?

- ▲ Examination
- ▲ Deposit

What is a secure test processing fee?

- ▲ \$275 per hour
- ▲ Time starts the first minute



What should you bring?

- ▲ Application
- ▲ *Complete test* (to be returned to applicant)
- ▲ Deposit (to be kept by Copyright Office)
- ▲ Secure test processing fee

Part 1: Examination

For print examination:

- ▲ one complete copy of assessment

For items part of a larger database:

- ▲ one complete copy of assessment OR
- ▲ 50 unmasked pages

Part 2: Deposit

- ▲ Defined as “sufficient archival record of the test”
- ▲ Determined by Literary Division



What is the deposit?

- ▲ Photocopy of the title page and masked or blocked out last page showing what is being copyrighted

PLUS

- ▲ The page number (if any) and the number of the last question

How to mask content

Unmasked content

1. There are two purposes of the visit: examination and deposit. The underlying purpose of the visit is to maintain security so that you can control what you bring and who sees it. So you may bring the entire assessment to the visit, but the only one who needs to see it is the Lit Rep. And at that, it can be a quick scan so that the rep does not see the details of the item. Then, the goal is to leave as little material as possible so that the content is not exposed. In general, this means show that there is a beginning and end as well as identify that the assessment is what it is. At Alpine, we have tools to mask content so that only the page number and a few words in the middle of the page are visible.

Masked content

1. The
de
se
se
vi
An
no
As
Ex
beg
as
ma
wo

How to mask content

1. Ther
deposi
securi
sees i
visit,
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Rep.
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Questions?