

## **U.S. Government Works: Not All in the Public Domain**

The U.S. Copyright Act clearly states that copyright protection in the United States is not available for any work of the federal government. This allows those physically present in the United States to use many U.S. government works, including pamphlets, documents, and images, without obtaining any copyright permissions or paying any copyright fees. These non-protected works are those created by a federal government employee as part of that employee's official duties. This excludes contractors and certain people who work with the U.S. government but who are not considered government employees for copyright purposes.

### **Not All Works Are Available**

Not all government works are freely available for use by the public. In some situations, the U.S. government does own copyright in works. The U.S. government may be a copyright owner and may obtain copyrights through an assignment, bequest or otherwise. For example, a work created by an independent contractor such as a consultant, writer or artist, may be assigned to the U.S. government. When a copyright is transferred or assigned to the U.S. government, the government then is a copyright owner.

The fact that certain U.S. government works are not protected by copyright does not create a requirement that these works be made publicly available without restriction. Federal laws and agency policies govern the public release of U.S. government information. Although the government does not generally restrict the use or distribution of most types of U.S government works, statutes such as the Freedom of Information Act (FOIA) provide the government with authority to restrict access for such purposes as national security, export control, and files relating to personnel, medical and similar issues.

### **Works of Joint Authorship**

If a government employee and independent consultant jointly create a work, there is an issue as to whether the government may be a co-owner of the copyright in that work with the contractor. In such a situation, it is best that the government obtain permission (or an assignment of copyright) from the contractor to use and distribute the work.

There are situations where federal government employees have and retain copyright protection in their works. For example, an employee who writes a novel in the evenings at home would own the copyright in that novel. An employee who develops a course based on knowledge attained at work would also likely own copyright in that course, unless the development of that course were part of the employee's work duties in the federal government.

The duties of an employee may be set out in a job description and may help determine the ownership of work done that is related to one's day job. A government employee pursuing interests beyond her day job might consider entering into a simple agreement with her employer, stating something to the effect that she is creating work outside her job description and that she is the owner of copyright in that work.

### **Outside the U.S.**

Outside the U.S., the protection of U.S. government works is dependent upon the laws of that country. This is due to national treatment in the international copyright treaties, which means that you apply the law where the work is being used. Thus, if a U.S. government document is being photocopied in Canada or Italy, you apply the copyright laws of Canada or Italy. This means that in some situations, an unprotected work in the U.S. will be protected in another country. It also means that a U.S. government department may be approached for copyright clearance in a work that may be freely available in the U.S. but may be protected by copyright in another country.

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