

The Honorable Paul Fuhs
Commissioner
Department of Commerce
and Economic Development

March 24, 1994

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465-2398

ATTN: Wendy Wolf, Deputy Director
Division of Tourism

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Commercial Section - Juneau

Copyright of Alaska
Host participant
workbook

In your note received by this office on September 6, 1993, you asked how your agency could copyright the participant workbook for Alaska Host.

Copyrights are governed by federal law, 17 U.S.C. § 101 et seq. When works are prepared by an employee, the employer or person for whom the work was prepared is considered the author unless the parties have expressly agreed in writing to the contrary. In a 1978 opinion, this office said that material prepared for the Department of Education under a professional contract could be copyrighted by the department in the absence of a signed written agreement to the contrary. 1978 Inf. Op. Att'y Gen. at 1 (Dec. 13; J66-0237-79). Another previous opinion pointed out that, when deciding whether to file for a trademark or copyright, the copyright was preferable because it was for a longer period of time -- 75 years compared to 20 years for a trademark. 1981 Inf. Op. Att'y Gen. at 3 (Sept. 2; A66-0037-82).

A Wisconsin attorney general's opinion answered a similar question in connection with several publications written by employees in the Wisconsin Department of Natural Resources. 1987 Wisconsin Op. (July 6; OAG 38-87). That opinion pointed out that, whereas publications prepared by employees of the United States government cannot be copyrighted, there is no similar provision relating to publications prepared by state governments. Exceptions are statutes, judicial opinions, and administrative codes which are considered to be in the public domain and, therefore, cannot be copyrighted.

As noted by the Wisconsin opinion, under 17 U.S.C. § 401 there is a requirement that notice of copyright appear on all copies distributed to the public. Under 17 U.S.C. § 405, the

omission of notice will invalidate the copyright unless at least one of three conditions occurs: (1) the notice was omitted from only a few copies distributed to the public; (2) registration for the work is made within five years after publication without notice, and a reasonable effort is made to add the notice to all copies; or (3) the notice was omitted in violation of an express requirement as a condition of the copyright owner's authorization.

Therefore, if this workbook has been distributed to the public for more than five years, your agency will no longer have a valid copyright interest.

If the workbook has been distributed for less than five years, you should register the work with the Register of Copyrights as soon as possible.

This is a very simple procedure, according to Arthur H. Weidel, "What the General Practitioner Should Know About Trademarks and Copyrights," 5th Ed. 1986. In order to register for a copyright, request an application for registration by writing to the following address:

Register of Copyrights
Library of Congress
Washington, D.C. 20559

The forms most widely used for copyrights appear as Appendix E of Weidal's publication. Instructions for preparing these forms as well as the procedures for obtaining copyright registration appear on the forms themselves. The fee for registering a copyright is \$10. The copyright application and copies are examined by this agency only to ensure that they meet statutory requirements. Unless there is a mistake on the form or copies, the application will be approved and the certificate issued within a few weeks. If mistakes are found, applicants are given the opportunity to correct them, and if mistakes are later found in the certificate, corrections can be made.

The form of notice provided for in the statute should be followed to the letter. 17 U.S.C.S. § 401 (1976). This notice should be placed on all publicly-distributed copies, and consists of three elements:

(1) The use of the letter C in a circle, the word "Copyright," or the abbreviation "Copr.";

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- (2) The year of first publication of the work; and
- (3) The name of the owner of the copyright.

This notice must be added to the copies in such a manner and location as to give reasonable notice of the claim of copyright and of sufficient size to be read by the naked eye. An example of such a notice is "Copyright The American Law Institute 1986."

In summary, it is possible for your agency to copyright this workbook if it has been distributed for less than five years. We trust this memorandum answers your question.

MJP/JMW/prm