

Do I need to put a copyright notice on my software?

by Lawrence Rosen

Until 1976, copyright law imposed formal notice requirements. The failure of a copyright owner, though carelessness or inadvertence, to comply with the notice requirements caused the work to fall into the public domain. In 1976 Congress amended the Copyright Act to liberalize the notice requirement. Placement of a notice was still required, but if the owner neglected to do so, the defect could be cured by registration of the copyright and other actions within five years after publication. Then, in 1989, a new Copyright Act came into effect, bringing U.S. law into compliance with the Berne Convention. For the first time, notice on published copies is no longer a condition of copyright protection.

A copyright notice is still important, however. The Copyright Act, in section 401(d), provides that the presence of a copyright notice prevents a copyright infringer from claiming her infringement was innocent, that is, it prevents her from making the "I didn't know I was doing something wrong" defense. This has a major impact on potential damages for infringement. An "innocent infringer" may convince a court to reduce the award of statutory damages to \$200, but a "willful infringer" can be held liable for statutory damages of up to \$100,000.

A copyright notice is easy to write. For most software, it consists of the following three elements: (1) The symbol © or the word "Copyright" or the abbreviation "Copr." (2) The year of first publication of the work. (3) The name of the owner of the copyright.

Make sure your copyright notice is affixed to copies in such manner and location as to give reasonable notice of your copyright. Put a notice on disks or CDs containing your software, in documentation accompanying your software, and on websites from which your software is downloaded.

A proper copyright notice, even though not mandatory, can have big payoff if you ever have to enforce your copyright.

Lawrence Rosen is an attorney in private practice in Redwood City, California (www.rosenlaw.com). He is also executive director and general counsel for Open Source Initiative, which manages and promotes the Open Source Definition (www.opensource.org).

Legal advice must be provided in the course of an attorney-client relationship specifically with reference to all the facts of a particular situation and the law of your jurisdiction. Even though an attorney wrote this article, the information in this article must not be relied upon as a substitute for obtaining specific legal advice from a licensed attorney.