



COPYRIGHT ASSIGNMENT & GUIDELINES

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1. Overview

A company's ability to buy and sell property is essential to its long-term life and vitality. Although it does not take up physical space, an excess of intellectual property can burden a company, directing limited funds towards maintaining registrations, defending against third-party claims, and creating and marketing a final product. Selling unused or surplus intellectual property can have an immediate positive effect on a company's finances, generating revenue and decreasing costs. When it does come time to grow a business, companies looking to purchase property (including copyrights or software) to support their growth must be sure that the seller does, in fact, have title to the desired items. A properly-drafted copyright assignment can help in both circumstances.

A copyright assignment is the transfer of an owner's property rights in a given creative work or works. Such transfers may occur on their own or as parts of larger asset sales or purchases. Copyright assignment agreements both provide records of ownership and transfer and protect the rights of all parties.

If you follow the enclosed sample and guidelines, you will have a written acknowledgment of the rights and responsibilities being transferred as part of your sale. This will provide essential documentation of ownership and liability obligations and you will be well on your way to establishing a clear record of title for all of your copyrighted works.

2. Dos & Don'ts Checklist

- A copyright is a form of protection provided by federal law to creators of "original works of authorship." This includes literary, dramatic, musical, and artistic works, both published and unpublished. The author of a copyrighted work can prevent others from copying, performing, or using the work without its consent. You can transfer any or all of these rights as part of a copyright sale.
- A copyright assignment is the transfer of copyright ownership rights from one party to another. This transfer is not valid unless it is in writing and signed by the owner or its authorized agent. If you want to transfer a right on a non-exclusive basis, a written agreement is usually not required. Note that in copyright law, an exclusive license essentially works as a transfer. The exclusive licensee has the right to use the copyright, assign it to a third party, or sue a third party for infringement. A non-exclusive licensee has the first of these, but neither of the other two rights.
- A copyright transfer is typically accomplished through a contract, like the written agreement form that follows. Although not technically required, assignments should also be recorded with the U.S. Copyright Office (USCO) to provide notice of the ownership change. No special forms are needed for recordation, although the USCO does encourage registrants to use a "Document Cover Sheet" to facilitate such recordings. If you decide to file a Document Cover Sheet, provide at least two (2) copies of this form with the assignment itself.

- Copyright ownership is different from ownership of physical copies of the work. The assignment does not transfer ownership in a physical item, even if there is a physical representation of the copyright. The author of a bestseller may hold a copyright in her book, but that doesn't mean she owns every copy of the book that has ever been published. If you want to transfer a particular item that represents or includes the copyright, you will need to draft and sign a separate sales agreement for that property.
- The advantage of selling your copyright outright (and not simply licensing or attempting to develop and market it yourself) is that you are guaranteed payment at the price you and the purchaser have negotiated. On the other hand, that one-time payment is all you will ever receive for your intellectual property and you will no longer have the right to control anyone else's use of your creation. By selling it or licensing it through your own company, the potential for future income remains, although that income is by no means certain. Before selling all of your rights in a copyright, make sure this is the best (and most lucrative) approach for you and your company.
- A copyright assignment does not have to be forever and does not need to be a complete assignment. You can grant a transfer for a specific period of time, in a specific area, or for a specific medium (e.g., allowing online use but not film use).
- Both parties should review the assignment carefully to ensure that **all relevant deal points** have been included. It is better to be over-inclusive than under-inclusive. Do not assume that certain expectations or terms are agreed to if they are not stated expressly on the document.
- Sign two copies of the assignment, one for you and one for the other party.
- It's a good idea to have your assignment notarized. This will limit later challenges to the validity of a party's signature or of the transfer itself.
- If your agreement is complicated, do not use the enclosed form. Contact an attorney to help you draft an assignment that will meet your specific needs.

3. Copyright Assignment Instructions

The following provision-by-provision instructions will help you understand the terms of your assignment.

The numbers and letters below (e.g., Section 1, Section 2, etc.) correspond to the provisions in the agreement. Please review the entire document before starting your step-by-step process.

- **Introduction of Parties.** Identifies the document as a copyright assignment. Write in the date on which the document is effective (usually the date that it is signed). Identify the parties and, if applicable, what type of organization(s) they are. Note that each party is given a name (e.g., "Assignor") that will be used throughout the agreement. The Assignor is the party that is giving ("assigning") its ownership interest and the Assignee is the party receiving it.

- **Recitals.** The “whereas” clauses, referred to as recitals, define the world of the agreement and offer key background information about the parties. In this agreement, this section includes a simple statement of the intent to transfer rights in the works created.
- **Section 1: Assignment of Works.** The assignment and acceptance of the assignment of the copyright in the work. Note that the works being assigned are not listed in the agreement itself. The agreement references “Schedule 1,” and explains that a full list of the created items is located on that schedule. Be as complete and clear as possible in your description of the property being transferred.
- **Section 2: Consideration.** In most agreements, each party is expected to do something. This obligation may be to perform a service, transfer ownership of property, or pay money. In this case, the Assignee is giving money (sometimes called “consideration”) to receive the Assignor’s property. Enter the amount to be paid, and indicate how long the Assignee has to make that payment after the agreement is signed.
- **Section 3: Assignor’s Representations and Warranties.** The Assignor’s promises about the works being sold. More specifically, the Assignor is swearing that:

3(a): it is the owner.

3(b): the works are original.

3(c): it has not sold or transferred the property to any third party.

3(d): it has the authority to enter the agreement.

3(e): it does not believe that the works have been taken from any third party without authorization (e.g., a knowing copy of a novel).

3(f): it does not know of any permissions that have to be obtained in order for the assignment to be completed. In other words, once the agreement is signed, the assignment will be effective without anyone else’s input.

3(g): the works weren’t created while the creator was employed by a third party. In many cases, if an individual was employed by a company and came up with a product, the company will own that product. This section offers assurance to the Assignee that there are no companies that will make that claim about the works being sold.

If you and the other party want to include additional representations and warranties, you can do so here.

- **Section 4: Assignee’s Representations and Warranties.** The Assignee’s promises about the transaction. More specifically, the Assignee is swearing that it:

4(a): has the authority to enter the agreement.

4(b) has enough funds to pay for the assignment.

If you and the other party want to include additional representations and warranties, you can do so here.

- **Section 5: No Early Assignment.** Prevents the Assignee from re-transferring the work, or using it as collateral for loans, until it has made complete payment of the money due under the agreement.

- **Section 6: Documentation.** The Assignor’s promise to help with any paperwork needed to complete the assignment (e.g., filing information about the assignment with the U.S. Copyright Office and transferring document titles). The bracketed phrases make the additional promise that the Assignor will help with transfer paperwork for filings outside of the country. If this is not relevant to your agreement, delete the bracketed phrases.
- **Section 7.** There are two alternatives provided in Section 7. Select the one that best suits your agreement.
 - (a) Option 1 - No Further Use of Works.** Indicates that after the effective date of the agreement, the Assignor will stop using all of the works and will not challenge the Assignee’s use of those works. Essentially, this option cuts off the Assignor’s use of the transferred property completely – after the sale, it will have no ability to use those items for any purpose. The bracketed phrase at the end may be applicable to any works that have credited creators (e.g., novels, artwork, etc.). If this does not describe the work being sold in this agreement, you can delete this phrase.
 - (b) Option 2 - Non-Exclusive License to Assignor.** This provision favors the Assignor a bit more than the first. It states that the Assignor will have the right to use the works and create derivative works from it, although it will not receive royalties for this use. This may be necessary, for example, if the works being sold are source codes for software. Although the copyright and the related rights to sell the product may rest in the Assignee, the parties might think it reasonable for the Assignor to continue to use the code it created.
- **Section 8: Successors and Assigns.** States that the parties’ rights and obligations will be passed on to successor organizations (if any), or organizations to which rights and obligations have been permissibly assigned.
- **Section 9: No Implied Waiver.** Explains that even if one party allows the other to ignore or break an obligation under the agreement, it does not mean that party waives any future rights to require the other to fulfill those (or any other) obligations.
- **Section 10: Notice.** Lists the addresses to which all official or legal correspondence should be delivered. Write in a mailing address for both the Assignor and the Assignee.
- **Section 11: Governing Law.** Allows the parties to choose the state laws that will be used to interpret the document. Note that this is not a venue provision. The included language will not impact where a potential claim can be brought. Write the applicable state law in the blank provided.
- **Section 12: Counterparts/Electronic Signatures.** The title of this provision sounds complicated, but it is simple to explain: it says that even if the parties sign the agreement in different locations, or use electronic devices to transmit signatures (e.g., fax machines or computers), all of the separate pieces will be considered part of the same agreement. In a modern world where signing parties are often not in the same city - much less the same room - this provision ensures that business can be transacted efficiently, without sacrificing the validity of the agreement as a whole.
- **Section 13: Severability.** Protects the terms of the agreement as a whole, even if one part is later invalidated. For example, if a state law is passed prohibiting choice-of-law clauses, it will not undo the entire agreement. Instead, only the section dealing with choice of law would be invalidated, leaving the remainder of the assignment enforceable.

- **Section 14: Entire Agreement.** The parties' agreement that the document they're signing is "the agreement" about the issues involved. Unfortunately, the inclusion of this provision will not prevent a party from arguing that other enforceable promises exist, but it will provide you some protection from these claims.
- **Section 15: Headings.** Notes that the headings at the beginning of each section are meant to organize the document, and should not be considered operational parts of the note.
- **Schedule 1: List of Works Transferred.** In order for a copyright assignment to be effective, the work being transferred must be clearly identified. Be thorough in your description and attach any registrations or samples you may have (if practicable). If you do include samples, reference the inclusion or transfer of those samples in the schedule (e.g., "* A copy of this document is attached"). If you do not include samples, provide a more complete description of the work. Consider attaching photographs for large-scale objects (e.g., sculptures or paintings).

DISCLAIMER

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COPYRIGHT ASSIGNMENT

This Copyright Assignment (the “Assignment”) is made and effective as of _____, 20____ (“Effective Date”) by and between _____, [an individual] [corporation] [etc.] (the “Assignor”) and _____, a _____ [corporation][limited liability company] [etc.] (the “Assignee”). The Assignor and the Assignee may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the Assignor has created and (i) has registered or (ii) has applied for those works more particularly described in Schedule 1 attached hereto and made a part hereof (collectively, the “Authored Work[s]”); and

WHEREAS, it is the Assignor’s intention to assign and transfer to the Assignee all of its right, title, and interest in and to the Authored Work[s]; and

WHEREAS, the Assignee desires to purchase or acquire all of the Assignor’s right, title, and interest in and to the Authored Work[s]; and

WHEREAS, each Party is duly authorized and capable of entering into this Assignment.

NOW, THEREFORE, in consideration of the covenants and conditions herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged,