



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
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WASHINGTON DC 20350-1000

SECNAVINST 5870.8
CNR
14 Jun 2019

SECNAV INSTRUCTION 5870.8

From: Secretary of the Navy

Subj: COPYRIGHT IN WORKS OF AUTHORSHIP PREPARED BY DEPARTMENT
OF THE NAVY PERSONNEL

Ref: (a) 17 U.S.C. §101
(b) 17 U.S.C. §105
(c) SECNAVINST 5720.44C
(d) 17 U.S.C. §506(c)
(e) 17 U.S.C. §403
(f) 28 U.S.C. §1498(b)

Encl. (1) General Guidance on Copyright

1. Purpose. To provide guidance regarding works of authorship prepared by Department of the Navy (DON) employees.

2. Applicability. This instruction applies to the Offices of the Secretary of the Navy, the Chief of Naval Operations, the Commandant of the Marine Corps, and all U.S. Navy, U.S. Marine Corps, installations, commands, activities, field offices, and all other organizational entities within the DON.

3. Policy. Works of authorship created by the federal government are not protected by U.S. copyright; works of authorship created by private citizens are protected by U.S. copyright. It is the responsibility of the Federal Government to determine whether works of authorship created by Federal employees were created in the performance of the author's official duties, and to thereby determine whether these works are or are not protected by copyright.

4. Responsibilities. The Chief of Naval Research (CNR) is responsible for the supervision, administration, and control of activities within and for the DON relating to copyrights and matters connected therewith.

a. The CNR shall issue guidance, as necessary, to implement this instruction.

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b. The Office of the General Counsel (OGC) shall provide legal advice and services, including rendering opinions on whether particular works of authorship made by DON personnel are works of the United States Government.

c. DON personnel shall consult with OGC attorneys, as necessary, for determinations on whether their works of authorship are works of the United States Government.

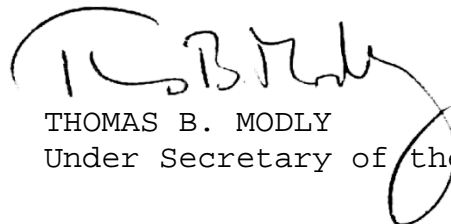
5. General Guidance. See enclosure (1).

6. Records Management

a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned according to the records disposition schedules found on the Directives and Records Management Division (DRMD) portal page:

<https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/SitePages/Home.aspx>.

b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact your local Records Manager or the DRMD program office.



THOMAS B. MODLY
Under Secretary of the Navy

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<https://www.secnav.navy.mil/doni/>

GENERAL GUIDANCE ON COPYRIGHT

1. Official Duty Determinations. Copyright protection in the U.S. is not available for a "work of the U.S. Government" (i.e., a work prepared by an officer or employee of the U.S. Government as part of that person's official duties) per references (a) and (b). Accordingly, before asserting a copyright in a work, a DON employee should consult with his or her supervisor to determine whether the work was prepared as part of the employee's official duties. Employees should be aware of applicable provisions found in chapter 2 of reference (c) with regard to writing, official duties and use of information obtained from official duties. The term "employee" includes all full-time and part-time civilian employees and all military personnel (both Regular and Reserve) of the DON.

2. Criteria for Official Duty Determinations. In making a determination of whether a work was prepared as a part of official duties, the employee and supervisor may be guided by these criteria:

a. A work prepared under the following circumstances is a work prepared as part of official duties:

(1) Preparation of the work was within the employee's position, job or billet description. This includes a work properly self-assigned by the employee who was in a position to do so; or

(2) Preparation of the work was properly assigned by the employee's superiors.

b. The presence or absence of a Government contribution in the preparation of the work does not, by itself, determine whether the work was prepared as part of official duties. (Examples of "Government contributions" are use of Government time, facilities, equipment, materials, funds, or the services of other Government employees on official duty.)

c. An employee may successfully assert a copyright in a work prepared at that person's own volition and clearly outside his or her official duties, even though the work includes knowledge or information derived from the employee's official duties or relates to the professional field of the employee.

Employees should consult the applicable portions found in chapter 2 of reference (c) as to the required review for any work prepared by them.

3. Transfer of Copyright. No DON employee (nor any supervisor of such employee) should execute any document which expressly or implicitly asserts a U.S. copyright in a work, or which claims to transfer a U.S. copyright, if the work was prepared as part of the employee's official duties. The employee should inform anyone who requests a transfer of a U.S. copyright that the work is a work of the U.S. Government and therefore not protected by U.S. copyright, citing reference (c). Works prepared as part of an employee's official duties may, however, be copyrighted in other countries. The employee should obtain DON OGC legal review of all requests for the transfer of a foreign copyright, including requests for the transfer of all copyrights without reference to a specific country. In the event that the work was prepared with another person whose contribution to the work was not made as part of official duties as a U.S. Government employee (for example, a contractor employee), another entity may, in some circumstances, own a U.S. copyright in the work. The Government employee should inform the requestor of the name and location of the other person, if known. The Government employee should also tell the requestor that the other person's interest in the copyright in the work can be addressed only with the other person, a representative of the other person, or an assignee of the other person's copyright.

4. Notice of Copyright. A notice of copyright should not be placed on a work prepared as part of the official duties of a DON employee. Under U.S. copyright law, it is a criminal offense to place a false notice of copyright on an article with intent to defraud, per reference (d). If a work is predominantly composed of portions prepared as part of a Government employee's official duties, but also includes portions that were not prepared as part of a Government employee's official duties, any notice of copyright should identify those portions of the work that were prepared as part of the Government employee's official duties and thus not protected under U.S. copyright law, per reference (e).

5. Navy Infringement of Copyrighted Works of Employees. An employee has no right of action against the DON for copyright infringement if he or she was in a position to order, influence

or induce the use of the copyrighted work by the DON. An employee does not have a right of action against the DON with respect to any copyrighted work prepared by the employee if the work was prepared as a part of the official functions of the employee, or if Government time, material or facilities were used in the preparation of the work, per reference (f).

6. Assistance. Employees are strongly urged to consult with their supervisor and with a cognizant OGC attorney for advice in applying this instruction. This consultation will assist in determining the rights of the DON and will inform the employee of the position the DON will assert. Employees should be aware that the OGC attorney's client is the DON, not the employee. Employees who desire an independent assessment of their rights in a work should obtain private counsel.