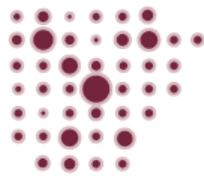




INTRODUCTION TO

COPYRIGHTS

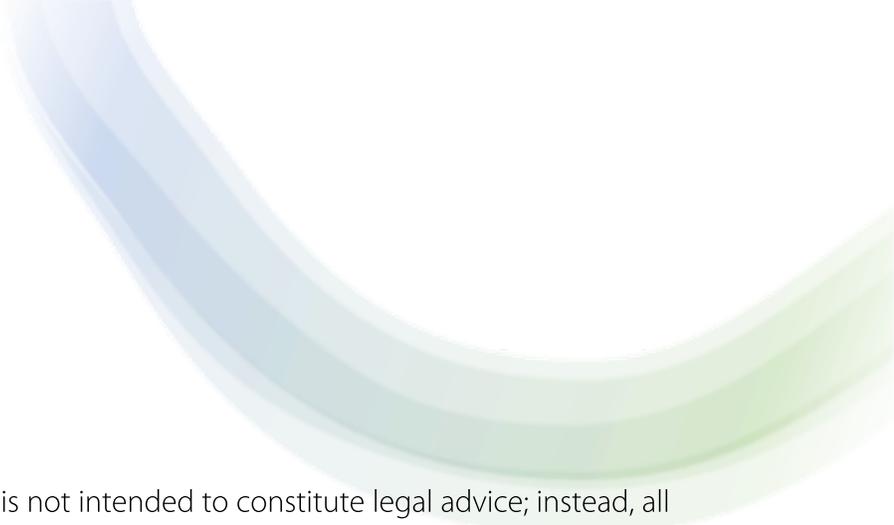


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Copyrights

Copyrights, commonly referred to as authors' right, protect original works of authorship that are fixed in a physical or tangible form. A copyright prevents others from using an author's work without authorization or compensation to the author.

Why are copyrights important?

Copyrights are important for several reasons. Namely, copyrights serve as a legal right to protect one's work product from exploitation. In doing so, copyrights intend to drive creativity and innovation through preservation of compensation for creation of such works.

Because copyrights encompass such a broad array of works, they impact virtually everybody. Whether you enjoy listening to the latest Top 40 hits or marvel at the modern architecture of a building, both are protected by copyright. Like all intellectual property, copyrights generally have a high economic value because the author can maintain distribution rights and acknowledgement rights.

What are the requirements for a work to be copyrighted?

In this context, the "physical" or "tangible form" requirement means the work must be recorded in a manner so that the author can share the exact work with others. The work can be recorded in several different ways, whether it be on an actual piece of paper, stored on the hard drive of a computer, or even stored virtually in the cloud. A copyrightable work also must be original, meaning that it cannot be copied directly from another source.

What types of works can I copyright?

There are several types of works of original authorship that are copyright protectable. Below are some examples and the category they would fall under.

TYPE OF WORK	EXAMPLES
Literary Works	Harry Potter Books
Musical Works	Lyrics to I Will Always Love You
Dramatic Works	Hamilton
Pantomimes and Choreographic Works	Balanchine's Nutcracker Choreography
Pictorial, Graphic, and Sculptural Works	Georgia O'Keeffe's Glen Canyon painting
Motion Pictures and Other Audiovisual Works	Martin Luther King Jr.'s I Have a Dream Speech
Sound Recordings	Whitney Houston's I Will Always Love You
Architectural Works	One World Trade Center

Can works inspired by other works be copyright protected?

Yes. **Compilations** and **derivative works** also are eligible for copyright protections.

COMPILATIONS are made by combining pre-existing works or pieces of data together in a specific format created by the author. Common forms of compilations include encyclopedias, telephone directories, and anthologies. Copyright protection for compilations extend only to the arrangement, selection, and presentation of the compilation itself and not the specific information contained therein.

DERIVATIVE WORKS are based on one or more pre-existing works that the author transforms and modifies into a new work. Some familiar examples of derivative works include abridged novels, motion pictures based on a literary work, or new versions of pre-existing software. Copyright protection for derivative works only cover the additions, revisions, or new materials added by the author.

While someone cannot copyright an exact copy of another work, only a minimal degree of creativity is required. A minimal degree of creativity can be found in actions as simple as compiling data together in a specific arrangement and layout. This can get complicated however, especially when it comes to fine arts.

For example, the mere act of printing a copyrighted painting onto a canvas, T-shirt, or other medium does not meet the minimal degree of creativity threshold needed to establish copyright. However, the act of arranging several pieces of data together to form a telephone book does meet the minimal degree of creativity. It is important to discuss this with an attorney if you are considering copyrighting a derivative work.

Do I have copyright over works I made for my employer?

A work made **FOR HIRE** is commissioned by or created specifically for a third party or employer. If the work in question is a work made for hire, the creator is not considered the author/copyright owner. Rather, the party who paid for that work to be created is considered to be both the author and copyright owner under the law. This relationship can be clearly established by having the creator sign a document clarifying such. To determine if your work is a work made for hire, visit www.copyright.gov/circs/circ30.pdf.

Do I need to register my copyright in order for my work to be protected?

A copyright originates at the time of creation of a work by the author; therefore, a copyright does not have to be registered to exist. However, federal registration is recommended for works that have high economic value. This is because to pursue an infringement action, the infringed work must be federally registered at the time of filing suit. Registration also is required to access certain expanded monetary remedies in the event of infringement.

How do I register my copyright?

Federal copyright registration may be obtained from the U.S. Copyright Office online by submitting an application at www.copyright.gov/registration. At the time of filing of the application, the applicant is required to submit a mandatory deposit consisting of two copies of your work's best edition (typically the first version of your work that you publicly sold or otherwise displayed) to the U.S. Library of Congress. The U.S. Copyright Office provides a detailed FAQ section answering the most common registration questions at www.copyright.gov/help/faq/faq-register.html#register.

What is copyright infringement?

Copyright infringement is the act of using, copying, or distributing a protected work without authorization of a copyright owner. It is important to note that intent is legally irrelevant to copyright infringement. This means it does not matter whether an infringer knew that he was infringing on the work of another. Some of the most prevalent forms of copyright infringement occur with illegal downloading of music, photocopying literary works, and use of music without licensing.

The prevalence of copyright infringement is due in part to some common myths. For instance, many are under the false impression that any work that does not have a copyright symbol or language on it is not protected. Another common misconception is that use of less than 10% of a work is not copyright infringement, or that the use of less than 30 seconds of a song is not infringement. These are all myths which are untrue and do not protect you against copyright infringement claims.

How long does a copyright last?

For works created after Jan. 1, 1978, copyright protection generally extends for the life of the author plus 70 years. Works with multiple authors are protected for the length of the life of the last surviving co-author plus 70 years. If the work is made for hire, the term of protection is the shorter period of 95 years from the date of first publication or 120 years from the year of creation. Anonymous and pseudonymous works are protected for the same term as works made for hire.

For works created before Jan. 1, 1978, the duration of copyright protection varies based on several different factors. For specific information on calculating the duration of copyright protection, visit www.copyright.gov/circs/circ15a.pdf.

What happens after the copyright expires?

After copyright protection expires, works enter the public domain. Works in the public domain are free for use and/or adaptation by anybody, at no cost, and people are free to make money from reproductions without paying the estate of the copyright owner.

For example, some of the earliest cartoon shows featuring Bugs Bunny are now in the public domain and can be copied and sold without compensation to the original copyright holder.

How much does it cost to register my copyright?

Overall, the process of obtaining a copyright is simple and can be done with or without an attorney; however, seeking the advice of counsel is recommended at least the first time you register. The current standard electronic filing fee is \$65. The average cost of obtaining a copyright with assistance of an attorney ranges from \$250 to \$500.

Are there any exceptions to uses being copyright infringement?

There are very few defenses to copyright infringement claims, with the vast majority being related to “fair use.” In IP law, fair use refers to the use of a protected work without the owners’ permission for purposes of criticism, comment, new reporting, teaching, scholarship, or research. These particular uses are narrow and will be evaluated based on an overall evaluation of:

1. Whether the character of use is commercial or for non-profit educational purposes;
2. Whether the work is more creative or factual;
3. The amount of the work used in relation to work as a whole; and
4. Whether the use causes potential economic harm to the work’s owner.

Fair use is more clear-cut when it comes to teachers using the work of another to analyze or critique. It is a much more complicated subject when it comes to art and using the work of another to create a new piece. More complicated examples of fair uses of fine art are:

- Display of a copyrighted work as a result of a search engine search; or
- Display of a concert poster in a biography detailing a band's career.

Conclusion

Operating a business is difficult and takes a lot of time and energy. This document is intended to help you make good decisions about protecting your work. While there is a lot of legwork you can do on your own for free or for very low cost, you will want to make sure you consult with an attorney to draft the legal documents and forms required, or at minimum, to ensure that you are on the right track if you decide to be responsible for the entire process of protecting your IP. All legwork you do yourself can save your attorney time, and save you attorneys' fees, by making it easier for your attorney to register your IP or draft appropriate legal documents.

Registering copyright is much more straightforward than trademark or patent registration. What is more complicated is determining whether a new work you have created inspired by the work of another is copyright infringement. This is why seeking the advice of counsel at the early stages of your process is the most prudent thing you can do to save time and money in the long run.

Useful websites:

- **Copyright application:** www.copyright.gov/registration
- **Copyright application FAQ:** www.copyright.gov/help/faq/faq-register.html#register
- **Determining work made for hire:**
www.copyright.gov/circs/circ30.pdf
- **Understanding the "in commerce" requirement:**
<https://tmep.uspto.gov/RDMS/TMEP/current#/current/TMEP-900d1e7.html>
- **Calculating copyright duration:**
<https://www.copyright.gov/circs/circ15a.pdf>

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