

Copyrights and What They Can Do for You

What is a copyright?

A copyright is a form of protection provided by the laws of the United States to the authors of “original works of authorship.” This includes “pictorial, graphic, and sculptural works” which include two-dimensional and three-dimensional works of fine, graphic, and applied art.

A creative work, or work of authorship, must meet these three criteria to be protected by copyright:

- It must be original. The author must have created rather than copied it;
- It must be fixed in a tangible medium of expression. It might be expressed on paper, audio or video tape, computer disk, clay or canvas but cannot be just an idea or verbalized thought;
- It must have at least some creativity.

A copyright is actually a bundle of separate exclusive subrights, including the exclusive right to:

- first publication, which is the right to determine when and where your work will first be displayed to the public;
- reproduce the work in copies;
- display or perform the work publicly;
- distribute the work; and
- prepare adaptation of the work known as derivatives. Derivative work is some form of adaptation or transformation of the original work.

If you decide to commercially exploit your work covered by a copyright, you typically transfer one or more of these rights to the publisher or other party responsible for getting the work out to the market.

How do I get a copyright to protect my work?

It's not necessary to file for a copyright – your rights exist the moment the piece becomes tangible. It is advisable to mark your piece with a ©, your full name, and the year the piece was created. You can also replace the © with the words copyright or copr.

Registering with the U.S. Copyright Office is also advisable.

How do I register for a copyright?

To register for a copyright you need to submit a completed form, a nonreturnable deposit of the work to be registered, and a nonrefundable fee, which, in 2004, is \$30.

The forms that will cover most artists work are forms VA or TX.

- VA covers copyright registration of published or unpublished work of the visual arts including two-dimensional and three-dimensional works of fine and graphic as applies to art, photographs, prints and art reproductions, maps, globes, charts, technical drawings, diagrams, and models.
- TX covers registration for published or unpublished nondramatic literary works, including fiction, nonfiction, poetry, textbooks, reference works, directories, catalogs, advertising copy, compilations of information and computer programs.

So what is a nonreturnable deposit?

For published works, you are usually required to submit one complete copy of the work. For unpublished work, two copies are required. For two- and three-dimensional work, photos are best. (See Circular 7b and 40a for more details.)

What happens after I file for a copyright?

If you apply for copyright registration, you will not receive an acknowledgment that your application has been received (the Office receives more than 600,000 applications per year), but you can expect:

- a letter or telephone call from a Copyright Office staff member if further information is needed or
- a certificate of registration indicating that the work has been registered, or if the application cannot be accepted, a letter explaining why it has been rejected.

If you want to know when your work arrives, send your material by registered or certified mail and request a return receipt.

How long do copyrights last?

As a result of the Copyright Extension Act of 1998, most copyrights for works published after January 1, 1978 last for the life of the author plus 70 years.

What if your rights are infringed upon?

In the event someone infringes your exclusive rights of a copyright, you are entitled to file a lawsuit in federal court asking the court to:

- issue orders to prevent further violation;
- award money damages if appropriate; and
- in some circumstances, award attorney fees.

Whether the lawsuit will be effective and whether damages will be awarded depends on whether the alleged infringer can raise one or more legal defenses to the charge. Common legal defenses to copyright infringement are:

- Too much time has lapsed between the infringing act and the lawsuit (statute of limitations defense);
- The infringement is allowed under the fair use defense;
- The infringement was innocent;
- The infringing work was independently created; or
- The copyright owner authorized the use in a license.

Some uses of a copyrighted work are considered fair use – that is, the use may infringe but the infringement is excused because the work is being used for research, scholarship, criticism or journalism. When determining whether an infringement should be excused on the basis of fair use, a court will use several factors including the purpose and character of the use, amount and substantiality of the portion borrowed, and effect of the use on the market for the copyrighted material.

A person who infringes a copyright but has a good reason to genuinely believe that the use is fair use is known as an innocent infringer. Innocent infringers usually don't have to pay any damages to the copyright owner, but do have to cease the infringing activity or pay the owner for the reasonable commercial value of that use.

In order to prove that a work was copied, sold or performed without authorization, the copyright owner must demonstrate that the infringer had a reasonable opportunity to view or hear the copyrighted work and that the two works are substantially similar.

Copyrights law is in place to help foster the intellectual growth of our country – protecting people's rights so they share what they're learning, thereby spreading education and the ability for new ideas to be formed.

Source:

Patent, Copyright & Trademark: An Intellectual Property Desk Reference, by Attorneys Stephen Elias & Richard Stim

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