

## **COPYRIGHT PROTECTION**

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A third type of intellectual property is the copyright. A copyright protects literary and artistic “expression” as well as other types of informative media that derive their value from the particular manner in which the information is expressed. Books, musical works, plays, computer programs, paintings, sculptures, and movies are among the types of works which are eligible for copyright protection. Generally, any work which is fixed and which includes an artistic or expressive component can be the subject of a copyright.

A copyright generally protects only a work’s appearance or “expression.” Copyrights are different and separate from patents and trademarks. You cannot copyright an invention; you patent an invention. You cannot copyright the name of a product; but you can establish trademark rights in a product name. However, you cannot patent or trademark a book, which is the particular expression of an idea, and is protectable only by copyright.

A copyright arises in a work if at least a portion of the work is original (not copied from something else) and the work includes some literary or artistic expression. Copyright only protects particular expressions of ideas, not the ideas themselves. For example, although a copyright exists in a particular painting of a lighthouse, the copyright only protects that particular painting and does not prevent others from creating a painting of the lighthouse. Painting a picture of the lighthouse is the “idea” and is not protectable; the particular painting of the lighthouse is an “expression” of the idea, and is protectable.

A copyright automatically attaches to a work at the time it is written down or otherwise fixed or recorded. There is no need to sell a copy of the work (as in the case of trademarks). Nor is it necessary that the work be registered with the federal government (as in the case of patents).

In order to best preserve the copyright in a work, all publicly distributed copies of the work should have a copyright notice affixed to them. The notice should include the familiar © symbol (or the word “copyright” or “copr.”), the year of first publication, and the name of the owner of the copyright. Thus, a sufficient copyright notice might be: © 2009 Norman Smith. The copyright notice is no longer a legal requirement, but it is still recommended. Within three months after publication, two copies of the best edition of a work should be deposited in the Copyright Office.

In addition, the copyright in a work can be registered with the Federal Government at any point during the life of the copyright. One copy (if the work is unpublished) or two copies (if the work is published) of the work, along with a completed registration form and a \$35 - \$65 fee are submitted to the Copyright Office. Typically, the Copyright Office will process the registration within a few months after receiving the application. The copy or copies which are submitted with the registration application fulfill the deposit requirement mentioned above.

Since registration with the copyright office is not required, failure to register will not invalidate a copyright. However, registration is highly recommended for a variety of reasons, including a presumption of validity. Also, if infringing activities occur after registration of the work, then statutory damages and attorneys’ fees may be available. Registration is fairly inexpensive and maybe easily performed by the individual without consulting an attorney.

The owner of a copyrighted work has the exclusive right to do and to authorize any of the following:

- Copying of the work;
- Adaptation of the work (e.g., making a movie based on a copyrighted book);
- Distribution of copies of the work to the public, by sale, rental or otherwise;
- Public performance of the work; and
- Public display of the work.

There are many limitations to the exclusive rights listed above. Two of the most common are the “fair use” and “first sale” limitations. Also, in contrast to a trademark, a copyright only has a limited lifetime.

## **FAIR USE**

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Other people can use (copy, perform, display, etc.) a copyrighted work for purposes such as criticism, comment, news reporting, teaching, scholarship, or research without infringing the copyright. Fair use is determined on a case-by-case basis. Whether a use is indeed a “fair use” depends largely on the effect of the use upon the potential market for or value of the copyrighted work.

## **FIRST SALE**

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The owner of a lawful copy of a copyrighted work can sell, rent or otherwise dispose of that copy. Some exceptions to this rule are limitations on the rental and/or leasing of sound recordings and computer software.

## **DURATION**

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Generally, a copyright lasts for the author's lifetime plus 70 years for those works which were created after January 1, 1978. Thus, a copyright lasts considerably longer than a patent (20 years from the filing date for a utility patent) but not as long as a trademark, which can theoretically last forever. In the case of a "work for hire" e.g., a work created for a company by an employee the term is 95 years from the date of publication.

Over the years a number of amendments and extensions have been made to copyright terms. Accordingly for works created prior to 1978, an attorney familiar with the myriad of rules should be consulted.

## **SUMMARY**

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According to statute, the owner of a copyright has the exclusive right to do any of the following:

- To reproduce the copyrighted work in copies or in phonorecords;
- To prepare derivative works based upon the copyrighted work;

- To distribute copies or phonorecords of the copyrighted work to the public by sale or transfer of ownership or by rental, lease, or lending;
- In the case of literary, musical, dramatic, and choreographic works, pantomimes, motion pictures and other audio visual works, to perform the copyrighted work publicly; and
- In the case of literary, musical, dramatic, and choreographic works, pantomimes, pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audio visual work, to display the copyrighted work publicly.

With the exceptions noted above, anyone who violates any of the exclusive rights of the copyright owner is an infringer. Remedies for infringement include injunctions, impounding and disposition of infringing articles, damages and profits, costs and attorneys' fees. Further, importation of infringing copies may be prevented.