

OWNING COPYRIGHTS – GETTING IT RIGHT

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Have you ever taken an original photograph, drawn or painted a picture, or written a poem, song, sales brochure, computer program, short story or book? If you have:

CONGRATULATIONS!

You are probably the proud owner of a U.S. copyright. Copyrights protect authors' rights in literary, musical or dramatic works, choreographed or dance works, pictorial, graphic and sculptural works, motion pictures, videotapes, sound recordings, translations, compilations of works and those derived from the works of others.

But, contrary to popular belief, registration of a copyright is *not* necessary to own a copyright. Copyrights are *immediately* vested in an author (the author immediately owns copyrights) when the work is "fixed" in a tangible form. That means taking simple steps, such as writing it down, entering it into your computer, sculpting it, performing it, taping or digitally recording it, or exposing it to motion picture film. Fixing these creative works is required because copyrights do not protect concepts or ideas: they protect the particular expression of the idea. Once your concept is no longer an idea in your head, but is performed or recorded, your idea has been expressed. And that expression is what copyright law protects.

The line separating mere "ideas" and protectable "expression" is often difficult to discern. Even courts have grappled with the difference between non-protectable "ideas" and copyrightable "expressions." Examples assist in understanding this distinction. The idea of a fight in outer space between the forces of good and evil is an idea (not copyrightable). Many books and motion pictures involve a storyline in which the hero fights one-on-one with the villain, there is a love interest, some character must be rescued, a major battle of spaceships in space, etc. Neither the idea of a space conflict, nor using these common types of scenes, is protectable under copyright law. But, the script, performance, or theatrical motion picture recording of a space story (such as Star Wars), the specific words spoken, movement of the actors and arrangement of the scenes, may be protectable "expression" under copyright law.

Similarly, the "idea" of a stuffed toy dog is unprotectable under copyright law. Certain features found on real dogs are common and would also be expected to be used on any stuffed dog toy (long tail, floppy ears, eyes, nose, etc.). The use of these common features would not be copyrightable. But, the particular way these features are portrayed could, in combination, be copyrightable and protected against infringement.

WHAT RIGHTS ARE OWNED?

In the U.S., a copyright gives its owner the exclusive rights to: reproduce or copy the work; create derivative works (adaptations); distribute copies to the public by sale or other transfer of ownership by rental, leasing or lending; publicly perform literary works, plays, movies, choreography, pantomime and music; publicly display pictorial, graphic and sculptural works; publicly perform digital sound recordings and transmit them; and make translations, as

well as to authorize others to also do so by sale and licensing of those rights. For example: the owner of the copyright in a book or script has the right to convert it to a play or TV show; the owner of a copyright in a cartoon character has the right to use it in software for a video game; the owner of a sculpture copyright has the right to make it into a painting or drawing; and the owner of a copyright in sheet music has the right to convert it into sound recordings (embodied in "phonorecords" such as CD, MP3, DVD, etc.), to publicly perform it (live performance), or use it in an audiovisual work (for example, a motion picture sound track, TV program or commercial advertisement). Copyright also provides the owner with the right to prevent others from copying the works or exercising the same rights. When others use these rights without the copyright owner's permission, copyright infringement may occur.

DID YOU NOTICE?

Works "published" prior to March 1, 1989 required a copyright notice to avoid falling into the public domain and invalidation of the copyright (there are some exceptions and methods to cure omissions which occurred between 1978 and 1989). The copyright notice consists of: (1) the symbol © (or for sound recordings fixed after February 15, 1972, the symbol ® (the letter "P" in a circle)), the word "Copyright," or abbreviation "Copr," (2) the name of the copyright owner (or an abbreviation or other name by which the owner is known), and (3) the year of first publication (the year may be omitted, however, for pictorial, graphic or sculptural work having accompanying textual matter, if any, reproduced on greeting cards, post cards, stationery, jewelry, dolls, toys or useful articles).

Since March 1, 1989, however, copyright notice is no longer mandatory. Although use of a copyright notice does provide potential procedural benefits in the event of litigation, and is therefore recommended, the failure to use it will not be fatal to the copyright and will not cause the work to fall into the public domain.

TERM LIMITS

How long does a copyright last? Under current U.S. copyright law, works created after 1977 are valid for the life of the author plus 70 years. The copyright is valid for 95 years after first publication or 120 years after creation (whichever occurs first), for a "work made for hire" (created by an employee within the scope of his or her employment, or specific types of works, specially ordered or commissioned, with an express written agreement signed by both parties that the work is a "work made for hire"), or an anonymous or pseudoanonymous (a fictitious name, such as "Mark Twain") work. Copyrights which came into existence prior to 1978, in many cases, were valid for 28 years with the option of a 28-year renewal for a total of 56 years. However, changes in the copyright law over the years have created many complex exceptions to this rule, allowing some works created before 1978 to remain valid until 2047, and some sound recordings to not enter the public domain until even later.

REGISTRATION - A DESIRABLE AND INEXPENSIVE WEAPON

You may have heard of the "poor person's copyright": sending yourself a copy of your work by registered mail to record an early date after the work was created. The "poor person's copyright" is not a copyright: it creates no legal rights other than to provide some evidence (which may or may not be accepted by a court) in demonstrating at least the earliest time your work was created. On the other hand, registering your copyright in the United States Copyright Office creates certain beneficial legal presumptions for a very small price. And, for most works, registration is required before an infringement lawsuit may be filed.

The good news? The fee to register a copyright can be as low as \$35. Although you don't have to register your copyright to own it, early registration is recommended. Registration within three months of first publication, or before infringement begins, is required to obtain a court award of attorneys' fees and statutory damages (the discretionary amount a court may award for infringement, which is set between \$750 and \$150,000 per work) if you win an infringement case.

The registration process is also relatively simple and can be completed online. The issued registration may take up to a year to obtain. For a significantly higher fee, under emergency conditions, a registration certificate can be obtained within 10 working days.

So, check your inventory and assets carefully. You may have a potential gold mine protectable under copyright law. However, to gain maximum protection for those materials, to secure or enforce your rights in them, or to obtain answers to questions about pre-existing works, the ownership of the copyrights, or the extent of protection, may require the assistance of an attorney experienced in copyright law. Obtaining that advice now and acting quickly to register your copyrights may provide significant legal benefits, protect valuable assets and eliminate far more costly problems in the future.

Leonard D. Messinger is of counsel to Fulwider Patton LLP, one of the oldest Intellectual Property law firms in Southern California. Mr. Messinger has had over 30 years of experience as an attorney practicing in the field of Intellectual Property Law.