

Clearing Up Misconceptions About Copyright Protection

Too often, business owners wait to protect their intellectual property until after it is infringed. This is especially true for business assets in which copyright registrations can be obtained. One reason may be that business owners do not know that certain of their assets may be protected. This article examines benefits of copyright registration and various business assets that may be protected by copyright.

What is a Copyright?

Copyright protection applies to literary (such as essays, articles and books); musical (such as songs and compositions); dramatic works, pantomimes and choreographic works, paintings, drawings, graphics, and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works. It applies to material that is original in its authorship.

How copyright protection is obtained is frequently misunderstood. No registration of the work or other action in the Copyright Office is required to secure a copyright. An author, musician, sculptor, artist, choreographer, architect, filmmaker or software developer obtains copyright protection automatically when the work is written or recorded on video, CD or audio tape or read through a machine. The owner obtains copyright protection in their work the moment they put it in tangible form, such as write it on paper, or record the work. However, to obtain the greatest protection, an owner should apply to register their work in the U.S. Copyright Office.

Benefits of Copyright Registration

A copyright owner obtains the exclusive right to copy the work, prepare additional works based on the original, sell, rent, or lease the work, perform the work publicly (in the case of musical, dramatic, and choreographic works, pantomimes, motion pictures and other audiovisual works), display the copyrighted work publicly, and in the case of sound and visual recordings, broadcast the work though radio, television or other means (such as on the Internet).

When the work is registered in the U.S. Copyright Office, the copyright owner gets three important weapons against infringers. The first is the ability to sue the infringer in federal court and seek damages even when the damages are uncertain or non-existent. The owner can generally obtain damages ranging from \$750 to \$150,000 per work infringed. The second weapon is the ability to ask a court to prohibit the infringer from continuing their wrongful action. Third, the owner can seek assistance of the U.S. Customs Service to block infringing works from entering the United States from abroad. Registration also creates a public record of the owner's claim in the copyright.

Identifying Copyrightable Assets

While some works that are entitled to copyright protection are more obvious, such as written essays, articles and books or original songs and melodies you compose, other works entitled to protection may not be as obvious. To evaluate what is and is not copyrightable, one needs to review their business assets to assess which of them meet the minimum requirements for copyrightability. Examples of works that may be copyrighted include your website content, photos and sounds created for and displayed on your website or store, original proprietary database materials that contain important data collected for use in your business, drawings and sketches of products you sell, 3-dimensional objects created for and used in your business that may have intrinsic value and proprietary software created for and used in your business.

An attorney who has experience in copy-

right law may provide assistance and can be used as a resource to identify those assets in your particular business that may be copyrightable.

Protecting Works

There are various steps a business can take to protect its business assets.

- The most effective and least expensive is applying to register the



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copyright in the work in the U.S. Copyright Office. At a cost of \$30 per application, as stated above, the copyright owner can obtain substantial damages against an infringer;

- Always use and place a proper copyright notice on a conspicuous place on the work to inform the public of your ownership claim. The notice consists of three elements. (1) the circled "C" symbol ("©"), the word "Copyright," or the abbreviation "Copr."; (2) the year the work was first published; and (3) the name of the copyright owner. For example, © 2004 ABC Enterprises.

- Record your registration with the U.S. Customs Service to prevent the importation into the United States of counterfeit products;

- Take active steps to police your copyrights. Monitor uses of the copyrights on the

internet and elsewhere to ensure no one else is using them without permission;

- If you discover an infringement, send cease and desist letters to the infringer demanding that they immediately stop using the work. If they refuse, file suit in federal court for injunctive relief and damages.

By having a program in place to identify, protect and monitor your copyrights, your business can better protect its assets before an infringement arises. You will then have the arsenal needed to more effectively combat infringement.

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