

COPYRIGHT BASICS
by Howard Cohn
Registered Patent Attorney

What Is A Copyright?

The term 'copyright' refers to a number of exclusive rights granted by the United States government to the authors of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works, whether published or unpublished and regardless of the nationality or residence of the author. A copyright protects the author's original expression as contained in the work. It is important to note that a copyright does not usually extend to ideas, procedures, processes, methods, systems, discoveries, names or titles.

What Does A Copyright Protect?

A copyright protects Literary works, Audiovisual Arts, Performing Arts and Sound Recordings.

- Literary works include fiction, non-fiction, poetry, prose, catalogs, ad copy speeches, software codes and computer programs.
- Visual Arts include paintings, drawings, photographs, sculpture, maps, graphic designs, cartoons, unique package designs, technical drawings, architectural works and web site designs.
- Performing Arts include musical compositions, dramatic works, scripts, choreography, motion pictures, and other multimedia or audiovisual works.
- Sound Recordings include published and unpublished sound recordings of musical, dramatic, or literary works.

How Does One Obtain Copyright Protection?

Copyright protection arises automatically when an "original" (owing its origin to the author) work of authorship is "fixed" (sufficiently permanent to permit it to be perceived, reproduced, or otherwise communicated) in a tangible medium of expression. Registration with the Copyright Office is optional, but is required before an infringement suit can be filed. Early registration is advantageous because it makes the author eligible to receive attorney's fees and statutory damages in a future lawsuit.

What Is The Scope Of Protection?

Copyright ownership protects against copying the "expression" in a work as opposed to the "idea" of the work. The difference between "idea" and "expression" is one of the most difficult concepts in copyright law. The most important point to understand is that the protection of the "expression" is not limited to exact copying, but can extend to copying that is "substantially similar."

A copyright owner has the exclusive right to:

- Reproduce copies of the original work;
- Authorize others to make copies of the original work;
- Make derivative works that are based on the original work;

- Distribute or market copies of the work;
- Publicly perform or display the copyrighted work; and
- Obtain court relief in the event others infringe the copyrighted work.

What Is The Term Of Copyright Protection?

Three factors determine the term of copyright protection:

- Who created the work;
- When the work was created; and
- When the work was first commercially distributed.

The duration of a copyright, for works created by individuals, is the life of the author plus 50 years (for works created after January 1, 1978). For "works made for hire" (see next paragraph), the copyright term is 75 years from the date of first "publication" (distribution of copies to the general public) or 100 years from the date of creation, whichever expires first.

Who Owns The Copyright?

Generally, the copyright is owned by the person (or persons) who created the work. However, if the work is created by an employee within the scope of their employment, the employer owns the copyright because it is a "work for hire." The copyright law also includes another form of "work for hire", i.e. certain types of works which are specially commissioned works. In order to qualify the work as a "specially commissioned" work for hire, the creator must sign a written agreement stating that it is a "work for hire" prior to commencing development of the product.

I keep my client closely informed of all issues and activity pertaining to their Copyright application. I do so by sending copies of all correspondence received from the Copyright Office and the Copyright Examiner. I also forward copies of all correspondence sent to the Copyright Office on your behalf.