



Rocking in Copyrights

COPYRIGHT FUNDAMENTALS

By: Andrew Abramson, Esq., Patent Attorney
Patent Profiler®, LLC

www.patentprofiler.com



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Introduction to Intellectual Property

Intellectual property is a valuable asset for any company. Often, the only way a small business can compete with the Goliaths of the world is through their intellectual property. Intellectual property takes many forms, such as copyrights, trade secrets, trademarks, and patents.

Copyrights protect works of expression expressed in a tangible medium, such as an artist's painting on a canvas or a musician's song lyrics written on paper. Copyrights protect the copying of the work of expression and so if two people create very similar paintings independently, no copyright infringement has occurred. Copyrights include several rights, such as a right to produce copies or reproductions of the work and to sell those copies, a right to import or export the work, a right to create derivative works, a right to perform or display the work publicly, a right to sell or assign these rights to others, and a right to transmit or display by radio or video. In the United States, most existing works have a copyright for a term ending 70 years after the death of the author. If the work was a work for hire (e.g., a work created by an employee of a corporation within the scope of the employee's employment, in which case the corporation is awarded the copyright), then the copyright lasts for 120 years after creation or 95 years after publication, whichever is shorter. An author obtains a copyright once the work of expression is materialized in a tangible medium. They can also be registered with the U.S. Copyright Office to obtain additional benefits.

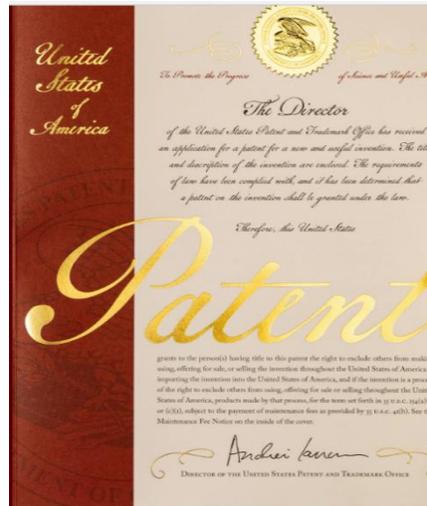
Trade secrets protect secrets of a company that provide a competitive advantage. The formula for Coke® is a classic example. Trade secrets last indefinitely as long as they remain secret. To have a trade secret, a company has to perform steps to keep the information secret, such as by only allowing a few key people to know the secret, securing the information (e.g., formula) in a safe, etc. If someone else finds out about the secret or reverse engineers a product to determine the secret, the trade secret protection is lost for good.

Trademarks are one or more words, graphics, logos, and/or scents that identify a source or origin of a product or service. An example is the Nike® Swoosh. To obtain a trademark registration, one has to apply for the trademark with the U.S. Patent and Trademark Office (USPTO). The USPTO performs a search to see if any other marks exist that are too similar to the application. If there is a likelihood of confusion with another mark, the USPTO will reject

the application. If you can convince the USPTO that your application should be granted, and if the USPTO does grant the application, generally, the trademark is valid throughout the United States. If you register your trademark, you obtain a presumption of validity and ownership. A senior unregistered user, however, can trump your rights (described below). You also have rights to potentially stop people not just for what is listed in the registration, but closely related goods / services or anything that would be confusingly similar. Typically, the owner of a registered mark can prevent unauthorized use of the mark in relation to products or services which are identical or similar to the registered products or services. The test is always whether a consumer of the goods or services will be confused as to the identity of the source or origin.



Patents are legal documents filed with the USPTO that describe and protect inventions. Patents provide a negative right – the right to exclude others from making, selling, using, or importing the patented invention. People often think of a patent as a monopoly in the claimed invention for a limited period of time. Patents are valid for twenty years from the earliest filing date (excluding provisional applications). In exchange for the monopoly granted by the U.S. government for a limited period of time, the patented invention is published so that others can learn from the patented invention and potentially build upon the knowledge.



Introduction to

Copyright Law

Copyrights protect works of expression expressed in a tangible medium, such as an artist's painting on a canvas or a musician's song lyrics written on paper. To secure a copyright, an author has to employ a minimal amount of creativity in creating the work. The Copyright Act of 1976 (the federal law which has copyright protection) grants authors many exclusive rights over a work.

These rights include:

- 1) reproduction right - the right to make copies of the protected work;
- 2) distribution right – the right to disseminate or sell copies to the public;
- 3) the right to create derivative works - the right to create new works based on the protected work; and
- 4) performance and display rights – the right to perform a protected work, such as a play, or to display the work in public.

An author can own and exercise the copyright or can transfer (assign) all or parts of her copyright.

Copyright protection begins automatically the instant an original work is fixed in a tangible medium (for example, paper). A work does not have to be entirely new to be protectable. Copyright law can protect new or original material that an author adds to an existing work. You can photocopy or use a protected copyright as long as the use falls under fair use (does not reduce the value of the copyright). Further, use of the copyright notice © is optional (but it is a good idea to include it).

Ideas are not protected by copyrights. Ideas are protected by patents.

Limitations on Copyright Law

Copyright law limits certain things:

- 1) ideas and facts are not protected;
- 2) fair use – an author is free to copy from a protected work for criticism, news reporting, teaching, or research as long as the copyrighted work does not lose value.

Copyright Duration

In the United States, most existing works have a copyright for a term ending 70 years after the death of the author. If the work was a work made for hire (e.g., a work created by an employee of a corporation within the scope of the employee's employment, in which case the corporation is awarded the copyright), then the copyright lasts for 120 years after creation or 95 years after the first publication, whichever is shorter.

Copyright Notice

The purpose of a copyright notice © is to alert the public that a work is copyrighted, when it was published, and the owner of the copyright. The notice should include the publication date and name of the copyright owner.

The copyright notice will be applied in various situations:

- 1) Authors of books published by established companies – the publisher will include copyright notices on every copy of the book it prints and distributes. The author just needs to make sure the information on the copyright notice is correct;
- 2) Freelance writers – these are people whose work appears in print or online magazines or blogs or websites. The publisher usually provides a copyright notice for the magazine or periodical.
- 3) Self-published authors – people who self-publish their work must write their own copyright notice(s).

If a work was published before 1978, you must place a copyright notice on the work. If you fail to do this, your work automatically is placed in the public domain (it has no copyright and can be used by anyone without permission).

If a work was published between Jan. 1, 1978 and March 1, 1989, the work can exist without a copyright notice and did not enter the public domain if, within five years after publication, the work was registered with the Copyright Office and a reasonable effort was made to add a copyright notice to all discovered copies.

If a work was published after March 1, 1989, there is no requirement to provide a copyright notice. It is beneficial to provide one anyway, as explained below.

Reasons to Have a Copyright Notice on Published Works

Notice can make infringement profitable. The method to get substantial damages is to prove that the infringement was willful, which means that the infringement was on purpose (the infringer knew that he or she was breaking the law but went ahead anyway).

Notice can also discourage potential infringers. A copyright notice tells readers that the work is protected by copyright and cannot be copied without the owner's permission

Copyright Registration

Copyright registration is a legal registration in which a copyright owner discloses:

- 1) Title of the work;
- 2) Who wrote the work and when; and
- 3) Who owns the copyright.

Registration in the United States Copyright Office makes the copyright public and provides many benefits if you ever face a legal challenge in court. To register a copyright, you have to fill out a registration form, pay an application fee, and deposit one or two copies of your work with the Copyright Office. You can file the application online or by mail. The Copyright Office website is www.copyright.gov.

Registration at the Copyright Office is needed to file an infringement suit. Infringement means that a person is copying your copyrighted work. If you register timely, you have the right to receive statutory damages and possibly your attorney fees if you sue someone successfully for copyright infringement. Statutory damages for copyright infringement are a damage award in civil law, in which the amount awarded is decided by the statute rather than being calculated

based on the degree of harm to the plaintiff. Amounts could be set per day, which might specify damages of \$1,000 per day or up to \$150,000, plus attorney fees and court costs.

The amount of statutory damages awarded for copyright infringement depends on the infringement. The more deliberate and willful the infringement, the more of a chance of a large award.

Timely Copyright Registration

A published work is timely registered, enabling the copyright owner to statutory damages and attorney fees, only if the work was registered:

- 1) within three months of the date of the first publication; or
- 2) before the date the copyright infringement began.

The first publication date for a copyright are when copies are made available to the public on an unrestricted basis.

If a work is unpublished and infringed upon, the copyright owner can receive statutory damages and attorney fees from the infringer only if the work was registered before the infringement occurred (the three month rule mentioned above does not apply with an unpublished work).

Some unpublished works can be preregistered. Only unpublished books, movies, music, sound recordings, computer programs, or advertising photographs can be preregistered, and only if the work is being prepared for commercial distribution.

If a work has photographs or artwork, they can be registered together if the following are both true:

- 1) they have never been published before, and
- 2) they were created by the author of the text, or the same person or entity owns the copyright to the artwork or photographs and text.

How to Register a Copyright

To register a copyright, you have to do three things:

- 1) fill out the application form;
- 2) submit the form and pay the registration fee; and
- 3) send the required deposit to the Copyright Office.

You can register with one of three methods:

- 1) online registration (www.copyright.gov) – this is the fastest and cheapest way to register;
- 2) registration using Fill-In Form CO at www.copyright.gov; or
- 3) registration using paper forms – there are a variety of forms, each for different works.

To register online, go to the Copyright Office website and click “Electronic Copyright Office.” You will then be navigated to the eCO online system. There are links to the eCO tutorial, which you may want to view for help. Create an account, and then begin the filing process.

First, select the type of work that you want to register. Most are literary works, which include:

- 1) fiction;
- 2) nonfiction;
- 3) poetry;
- 4) textbooks;
- 5) reference works;
- 6) directories;
- 7) catalogs;
- 8) advertising copy;
- 9) compilations;
- 10) computer programs; and
- 11) databases.

If your work is published, you should state the month, date, year, and country when and where your country was first published. If your work is unpublished, state the year when the work became fixed in its final form. This year is not related to the publication date.

Also, list the name(s) of all author(s) of the work being registered. You have to also provide the author's citizenship or domicile, even if the author is a business. Next, you have to provide the name and address of the people or organizations that have ownership in the copyright being registered.

You should provide contact information and pay the filing fee.

The final step is submitting a copy of the work, which is called a deposit. The deposit must be one or two copies of the "best edition" of the work. This is discussed later.

Communications about Registration Examination

After you submit a claim for copyright registration, a registration specialist will examine the materials you provide. Whenever possible, the registration specialist will examine an application without communicating with you. However, the registration specialist will communicate with you by email if information is missing or requires clarification, or if you've used a single application where a standard application is required. The Office sends most of its correspondence by email from the address cop-ad@copyright.gov. Because the Office uses email as its primary means of communication, it is important to maintain an accurate, verifiable email address with the Office.

Registering Newspapers, Magazines, and Other Periodicals

Newspapers, magazines, and other periodicals are usually referred to as "collective works." These are works in which a number of individual contributions are put together as a collective whole.

When the work is registered as a whole, the registration protects:

- 1) revising, editing, compiling, and other efforts to put the work into final form;
- 2) any individual contributions by the publication's employees or non-employees who signed work-for-hire agreements (discussed below);
- 3) any individual contributions by freelancers to which the publication has purchased all rights.

If a periodical has any contributions by an individual author (and the rights have not been

purchased), those are not protected when it is registered as a whole. To protect this work, the individual contributor must register separately.

Also, for a collective work, two complimentary subscriptions for the periodical must be sent to the Library of Congress (for as long as you use the group registration). The two subscriptions must be sent separately to:

Library of Congress
Copyright Office-SE 101
Independence Avenue SE
Washington, DC 20559

You should write a letter that identifies the publisher, title, volume, and issue number that starts the complimentary subscriptions.