

## COPYRIGHT LAW

The source of copyright protection is found in the United States Constitution. Article I, Section 8, Clause 8 provides as follows: "Congress shall have the power to promote the progress of science and the useful arts, by securing for a limited time to authors and inventors the exclusive right to their respective writings and discoveries." Congress has exercised its constitutional power to regulate copyrights through the Copyright Act of 1976, and Congress established the Copyright Office to help administer the Copyright Act.

What is protected by the Copyright Act? The Copyright Act extends copyright protection to "original works fixed in a tangible medium of expression." Below, we will analyze each element of this statement.

Original means that the work is the author's own creation and was not copied from another source.

A work is any of the following eight categories of expressions: (1) literary, (2) musical (including lyrics), (3) dramatic (including musical accompanying music), (4) pantomimes and choreographic, (5) pictorial, graphic, and sculptural, (6) audiovisual, including movies, (7) sound recordings, and (8) architectural. The Copyright Office and the courts have given these categories a broad interpretation. For example, computer programs may be considered literary works.

Although the concept of a work is broadly interpreted, it is not limitless. The following categories of expression are not protected by the Copyright Act: (1) ideas, concepts, methods, and systems, (2) useful articles or devices (unless they incorporate pictorial, graphic, or sculptural materials or designs, such as a floral pattern on a fabric), (3) layouts, formats, and blank forms designed to record information, (4) single words or short phrases (such as trade names or slogans), (5) familiar shapes or symbols, unless their arrangement or combination is original, and (6) works consisting of previously registered or published material, such as a compilation of facts that, while labor intensive, contains no creativity in its selection, coordination, or arrangement. (For example, telephone directory listings are not protected.) Although these categories of expression may not be protected by the Copyright Act, their owner may be entitled to other types of protection, such as patent or trademark protection.

A question concerning the identity of the author may arise when someone is paid to create a work for someone else. For example, you may be paid to write an article for a small but widely read business-oriented publication.

Whether you are the author (and thus the owner) of the article is determined by the "work for hire" rules. Absent an agreement to the contrary, employers are considered to be the author of works employees create for them, and independent contractors are considered to be the authors of works they create for their clients. In our example, if you are an independent contractor rather than an employee of the business publication, you, not the publication, will be author. To avoid disputes under the work-for-hire rules, you should always prepare a contract identifying the party who shall be considered the author and owner.

The requirement of a tangible medium of expression means that the work can be perceived, reproduced, or otherwise communicated for more than a transitory period. For example, an unrecorded extemporaneous speech would not be protected.

What protection does the Copyright Act grant? If a work falls within one of the eight categories of protected works, the Copyright Act grants the owner of the work the following exclusive rights: (1) to reproduce the work (such as photocopies and multiple copies in the form of books, recordings, and so on), (2) to prepare derivative works (such as modifications, adaptations, and translations), (3) to distribute reproductions of the work and derivative works, and (4) to publicly perform and display the work and derivative works. In addition to these exclusive rights, the Copyright Act also enables the owner to register the work with the Copyright Office. Registration is not

What rights does the owner gain by registering a work with the Copyright Office? Registration of works protected by the Copyright Act creates a public record of that work. This public record (at least theoretically) prevents disputes concerning the authorship and originality of works. To induce owners to register their works (and thus prevent disputes) Congress has granted owners additional rights that are available only through registration. These are as follows: (1) Owners can sue for infringement (unauthorized copying) only if they have registered the work. (2) Owners who register their work within three months of the first publication or before an infringement occurs can recover attorneys fees (which can be enormous) and greater compensation than owners who register later. (3) Owners who register within five years of first publication are presumably the bona fide owner of an original work. (This presumption gives the owner a large advantage in court against a claim of authorship later made by someone else.)

How does an owner register a work with the Copyright Office? Registration of works protected by the Copyright Act occurs on the date the owner deposits complete copies of the work with the Copyright Office along with a completed registration form and a filing fee. (The number of copies is usually

one for unpublished works and two for published works, but it may vary depending on the type of work.) The Copyright Office does not immediately acknowledge or confirm a registration. Instead, a Copyright Office examiner first reviews the application and the work to determine whether the work truly qualifies for protection under the Copyright Act and thus may be registered. If the examiner approves the registration, the Copyright Office assigns the work a registration number and issues a certificate of registration. This process usually takes at least four months.

How does an owner notify the public of a copyright? For works first published after March 1, 1989, the owner does not need to put a copyright notice on the work to obtain protection under the Copyright Act (but the notice is required for works first published before March 1, 1989). However, use of the notice may dissuade someone from copying your work. It may also prevent infringers from successfully asserting that they didn't know the work was protected and thus avoiding damages for infringement. The notice should be placed on each copy of the work in a place and size so that it others can readily see it, and it should contain the following: (1) the symbol (c), the word "Copyright," or the abbreviation "Copr."; (2) the year in which the work was first published; and (3) the name of the owner. For example, my copyright notice for this article is: (c) 1996 James L. Poznak.

Limitations on copyright protection. The protection granted by the Copyright Act is limited by a doctrine known as "fair use." This means that under certain circumstances, someone may be free to make a minor use of copyrighted work. There are four elements involved in fair use: (1) the reason for the use (commercial use generally does not qualify, while educational use or use for comment or criticism may qualify), (2) whether the copied work is still published, (3) the degree to which the work was copied and, most importantly, (4) the degree to which the economic value of the copied work has been diminished. There are no hard and fast rules regarding the fair use doctrine. Instead, it is applied on a case-by-case basis.

International copyright rules. The Copyright Act only applies to works published in the United States. Works published in other countries are governed by the copyright laws of that country, if any. Two international treaties cover copyrights, the Berne Convention and the Universal Copyright Convention. Countries that subscribe to either of these conventions grant to nonresidents the same rights granted to residents. However, depending on the country, those rights may be less extensive than the rights granted by the U.S. Copyright Act. Moreover, enforcing copyrights in a foreign country may be quite difficult and expensive.