Copyright Basics

What is a Copyright?

A Copyright is an exclusive right to use—or authorize others to use—literary, artistic, or musical material. Specifically, Copyright protects "original works of authorship," which includes the following categories:

- Literary works
- Musical works (including accompanying words)
- Dramatic works (including accompanying music)
- Pantomime and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works

The categories are interpreted broadly. If a book, poem, or song is an "original work of authorship" by you, then this is protectable as a "literary work." Maps and architectural plans count as "pictorial or graphic works."

Some works are more complicated. For instance, computer programs count as literary works, in general. However, certain related aspects of software or application code are not Copyright protected. Copyright protection is not available for ideas, program logic, algorithms, systems, methods, concepts, or layouts. Additionally, it is common for app developers to use open source code, usually under some sort of licensing agreement. Keep in mind that if you licensed any source code from someone else to use in your application cannot by Copyrighted by you.

In many cases, a person or company hires software developers as independent contractors to assist in the creation of software. Ownership of all work created by the independent contractor is governed by the words of the employment agreement. Many agreements specify that the independent contractor assigns his or her rights over all creations made during the employment to the employer. In other words, if the independent contractor developed a valuable new line of code while working for the company—even if the code is unrelated to the project for which they were hired—the company owns the Copyright to the code, not the contractor. If the agreement does not specify that the contractor assigns his or her rights to the employer, then the contractor may be able to claim Copyright in the software. This can get confusing, and may depend on whether the lines of code were developed during hours that the contractor was actively working for the employer, or on their own time, or whether the development of those lines of code could be interpreted as part of the employment agreement.

Examples of what cannot be Copyrighted

Recipes: A recipe itself—that is, a list of ingredients for a food, compound, or prescription—cannot be Copyrighted. A cookbook might be Copyrighted, as a "literary work," depending on how it is presented, but the recipes on the pages within cannot be. Recipes can be protected in some cases as Trade Secrets, though. For more on Trade Secret protections, please see the EILC handout, "Trade Secret Basics."

Logos: Logos, names, titles, slogans, or short phrases (too short to constitute a poem, for instance) cannot be Copyrighted. Many of these things can be protected through Trademark, though. For more information on Trademark protections, please see the EILC handout, “Trademark Basics.”

Copyright vs Patent vs Trademark

A Patent protects inventions or discoveries. A Trademark protects words, symbols, or designs that identify a source of goods or services. A Copyright protects original works of art.

Imagine that Jake’s Music Company (JMC) invents a brand new musical instrument. JMC would obtain a Patent for the instrument itself, preserving its right to manufacture the instrument, and preventing other companies from manufacturing the instrument. The JMC logo plastered on the instrument would be protected by Trademark, and another company could not put the JMC logo on its own instruments. The music created by an artist on JMC’s new instrument would belong to the artist, and be protected by Copyright.

Why should I register a Copyright?

Copyright exists from the moment the work is created. You can register a Copyright, but it is not required. Copyright Registration *is* required if you want to be able to bring a Copyright infringement lawsuit. Registration provides some advantages that may be worth pursuing. Registering your Copyright establishes a public record of your claim and gives you some ability to protect against importation of something that infringes your Copyright. Depending on when you register your Copyright, you may have certain rights in court that you would not otherwise have, or access to certain remedies.

How do I register a Copyright?

To register your Copyright, you must file an application with the U.S. Copyright Office. That application contains three parts: an application form, a filing fee, and a nonreturnable copy of the work you are seeking the Copyright for. The copy of your work is called a “deposit,” because the Copyright Office will deposit that copy in their records. The application for a Copyright can be completed online at the U.S. Copyright Office’s website (https://www.Copyright.gov), or you can request a paper application by calling (202) 707-9100. The process for registration can take up to a year, but you will receive notice once the Copyright Office has received your application. Generally, online applications are quicker than paper applications.

Do I need a lawyer?

Even though Copyright exists from the moment your work is created, what counts as an “original work of authorship” or when that work was “created” can be complicated. A lawyer can help your decide first whether Copyright is the right type of protection for your material, as opposed to Patent or Trademark or even Trade Secrets protection. You should consult a lawyer to determine the best method of application for your Copyright, and to figure out how to submit an acceptable copy of your work in the application. There are additional fees and special filing requirements for certain types of works, as well, and your lawyer can help you sort through all of these.

Please contact the Entrepreneurship and Innovation Law Clinic at the WVU College of Law for any questions, or for help applying for a Copyright.

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