

EXPRESSION

CREATIVE WORK

COPYRIGHT BASICS for Business Owners

COPYRIGHT

INTELLECTUAL

AUTHORSHIP

 McNees

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What is a copyright?

A copyright is a property right in any original expression of an idea that is fixed in a tangible form. Examples of copyrightable works include: websites, commercials, jingles, product brochures, software, works of architecture, and advertisements.

It is important to remember that ideas and facts are not copyrightable. Rather, it is the particular expression of an idea that is protected under copyright law. For instance, if you create a documentary, you are entitled to protect the expression of the film's subject matter. You cannot prevent someone else from creating a documentary on the same topic.

Copyright law does not protect something that is solely functional. However, if your work contains both functional and expressive components, the expressive features may be copyrightable.

Do I own my copyright?

If you create a copyrightable work, you typically are the owner. However, there are exceptions to this rule.

If an employee creates a copyrightable work within the scope of his or her employment, the employer typically owns the work. This is called a "work made for hire." Conversely, if an independent contractor creates a copyrightable work, the contractor generally owns the work instead of the company or person who hires the contractor. Under certain circumstances, material that a person or company specially orders or commissions from a non-employee may be considered a "work made for hire" if the person or company and the contractor signed an agreement to this effect.

In the business world, independent contractors often include advertising agencies, photographers and website and software developers. Business owners should always try to have contractors sign a written agreement assigning their rights to works to the business.

If multiple authors contribute to the creation of a work, then they may be considered co-owners. To be co-owners,

each author has to contribute expression to a work that is copyrightable on its own.

If you create a new, sufficiently original work that is based on or derived from an existing work, you have a copyright interest only in your contribution to the creation of your new work. An example of a copyrightable "derivative" work is a revision of a website or published book. Similarly, if you create a compilation by collecting and arranging preexisting works, such as a book of other people's photographs, you own a copyright only in your assembly of these materials, rather than in the underlying works themselves.

What rights do I have as a copyright owner?

As a copyright owner, you have the exclusive right to do the following:

- Make copies of your work;
- Adapt or modify your work;
- Publicly distribute copies of your work;
- Display your work; and
- Perform your work publicly.

What is the duration of my copyright?

Copyright protection begins at the moment a work is created and fixed in a tangible form.

Generally, copyright law automatically protects copyrightable material for the duration of the author's life plus 70 years. However, the term of a copyright depends on a variety of factors, including when the copyrighted work was created, the type of work, and the author's identity. You should consult an intellectual property attorney to determine how long your work will be protected under copyright law.

Why should I register my copyright?

There are many benefits to registering your copyright at the U.S. Copyright Office, including:

- The ability to sue someone for infringing on your rights;
- The right to recover damages without proof of

financial loss;

- The right in certain circumstances to recover attorney's fees; and
- The right to prevent continued infringing conduct.

If your copyright is registered and a third party infringes on your rights, you can collect up to \$30,000 for unintentional infringement, and up to \$150,000 if the infringing acts were willful.

How do I register my copyright?

The copyright registration process is fairly simple and inexpensive. Typically, you are required to fill out an application, pay a registration fee, and send a copy, or copies, of your work to the Copyright Office.

The Copyright Office's website www.copyright.gov provides applications specific to different types of works. These applications are accompanied by detailed instructions. You can complete these forms with the assistance of an intellectual property attorney or on your own. You may call the Copyright Office with questions about filling out your application at its toll-free number, 1-877-476-0778.

Filing for copyright protection electronically costs, at a minimum, \$35 for a single work created by a single author, and \$55 for all other filings. Higher fees are required for paper filings.

After you file for copyright registration, the Copyright Office will examine your application. Typically, if your work is considered sufficiently original and you have properly completed your application, the Copyright Office will formally register your copyright. If your application is not acceptable, the Copyright Office will notify you in writing and permit you to correct it.

Why should I use a copyright notice with my work?

Although it is not required, you should always display a copyright notice on your work. Such notice makes others

aware that your work is protected. Using a copyright notice may make it easier to collect enhanced damages for willful infringement. Your copyright notice should contain the following elements:

©, COPR., OR COPYRIGHT + [year work was first published] + [name of copyright owner]

Example: © 2014 ABC Company

How do I know if someone is infringing on my rights?

A third party may be infringing on your copyright if they exercise one or more of your exclusive rights without your permission. For instance, if someone makes a copy of your work without asking for your authorization, then it is possible that he or she has violated your rights.

To establish that someone has infringed on your copyright, you must be able to show that:

- You own the copyright;
- The third party had access to your copyrighted work; and
- The material shares at least one substantially similar element with your work.

The third party does not have to intend to copy your work. He or she could be liable even if copying your work was accidental or subconscious.

Under certain circumstances, a third party's use of your work may not be considered copyright infringement. If a third party exercises one of your exclusive rights for use in research, news reporting, comment and criticism, or other beneficial purposes, that use could constitute "fair use." There is no clear definition of "fair use," so you should talk to an intellectual property attorney if you believe someone is infringing on your rights (or if you are concerned that you might be infringing on someone else's copyright).