



“Common Questions About Copyright Law”

By James A. Wahl

What Is Protected Under Copyright Law?

Copyright law protects original works of authorship, such as writings, songs, artwork, photographs, and computer code. Names, slogans, and short phrases are not copyrightable; these are protected by trademark law. A copyright owner has the exclusive right to reproduce, publish, perform, display, distribute and license a copyrightable work.

How Do I Get a Copyright?

When someone creates an original work of authorship, he or she automatically is afforded the exclusive rights listed above the moment he or she fixes the work “in a tangible medium of expression.” For example, copyright in a photograph or written work attaches when the work is printed. Copyright in original software code attaches when the code is saved in a digital or electronic format. Registering the copyright is not required to create a copyright, but registration makes enforcing the exclusive rights in the work much easier. If you register a copyright before someone infringes your exclusive rights, you have the right to recover statutory damages of between \$200 and \$150,000 per act of infringement. You may also be eligible to recover your attorneys’ fees.

Who Owns the Copyright?

The author of a copyrightable work is the owner of the copyright in that work, unless it’s a “work made for hire.” An employee who authors an original work within the scope of his or her employment has created a work made for hire in which the employer owns the copyright. A work created by an independent contractor will generally not be a work made for hire, and the contractor will own the copyright absent a written agreement assigning copyright ownership. For example, if a business hires a non-employee to create software code, print content or advertising artwork, the independent contractor will own the copyright unless the parties have a written work made for hire agreement.

Is the Copyright © Notice Required?

The copyright © notice is not required to create or define exclusive rights, but using the notice puts people on notice of the author’s exclusive rights in the work. Using a notice will make enforcing and protecting your rights easier. The best format for the copyright notice is “© <year of authorship> <name of owner>.”

Are There Exceptions to the Exclusive Rights?

Yes, most notably the fair use doctrine, which allows for the reproduction of copyrighted materials under certain circumstances. There is no bright line test for determining when a use is a “fair use,” but in general, courts will consider the purpose and character of the work, the nature of the copyrighted work, the amount

of the copyrighted work used, and the effect of the use on the potential value of the copyrighted work. In general terms, commercial use of a large or significant portion of a copyrightable work is unlikely to be a fair use.

How Long Does a Copyright Last?

The general rule is that a copyright is protected from the date of creation for a term enduring during the author's life plus 70 years after the author's death. Works made for hire are protected for the shorter of 95 years from the date of publication or 120 years from the date of creation.

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