



SMALL BUSINESS & NONPROFIT CLINIC

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12/9/08

Copyright 101

What is a copyright?

Copyright is a form of protection provided to creators of original works. Work that can be protected through copyright includes books, songs, art, web design and other applicable intellectual works. This protection is available to both published and unpublished works. Under common law, a creator has a copyright in his or her work the moment the work is fixed in a tangible medium of expression. For example, a song is not fixed in a tangible medium of expression until it is recorded in some manner, such as burning it to a CD.

Generally, a copyright gives the owner the exclusive right to do and to authorize others to do the following:

- ✓ To reproduce the work in copies
- ✓ To prepare derivative works based upon the work
- ✓ To distribute copies of the work to the public by sale, rental, lease, lending or other transfer of ownership
- ✓ To display the work publicly or to perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, motion pictures, and other audiovisual works

Even though an individual or business may have a common law copyright on its creative work, it would be wise to federally register the copyright with the United States Copyright Office.

Some of the advantages of federal registration include:

- ✓ Registration establishes a public record of the copyright claim, which puts others on notice of the holder's exclusive right and will aid in legal defense of the copyright.
- ✓ Before an infringement suit may be filed in court, registration is necessary for works of U. S. origin.
- ✓ If made before or within five years of publication, registration will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate.
- ✓ If registration is made within three months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner.
- ✓ Registration allows the owner of the copyright to protect its work from others outside of the United States. This can be done by recording the federal registration with the U. S. Customs Service for protection against the importation of infringing copies.
 - a) For additional information about international protection, go to the U.S. Customs and Border Protection website at www.cbp.gov/xp/cgov/import.

What steps should I take in order to obtain registration with the United States Copyright Office?

First, an applicant should determine if the work is able to obtain copyright protection. Works that cannot be afforded copyright protection include:

- ✓ Works that have not been fixed in a tangible form of expression (for example, a choreographic dance that has not been notated or recorded, or an improvisational speech that has not been written or recorded)
- ✓ Titles, names, short phrases, and slogans, familiar symbols or designs, lettering or coloring, mere listings of ingredients or contents. (See our Trademark Tutorial for a discussion of protection of a title, name, phrase, or slogan.)
- ✓ Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration
- ✓ Works consisting entirely of information that is common property and containing no original authorship. For example, any lists or tables of public information like a phone book.

An applicant should also conduct a search to see if there is already a record of copyright for the work. A very good detailed explanation of how to investigate the copyright status of a work is provided here: <http://www.copyright.gov/circs/circ22.html>.

Now, to obtain a federal registration an applicant must send three things to the USPTO: a completed application form, the correct filing fee, and a non-returnable copy of the work being registered to be deposited with the Library of Congress.

For most people the optimal route to registration will be through online registration with the Electronic Copyright Office (eCO). Advantages of filing with the eCO include:

- ✓ Lower filing fee of \$35 for a basic claim (most paper form filing fees are \$45)
- ✓ Fastest processing time
- ✓ Online status tracking
- ✓ Secure payment by credit or debit card, electronic check, or Copyright Office deposit account
- ✓ The ability to electronically upload certain categories of deposits directly into the eCO.

Currently, the eCO accepts basic registrations only, including (a) any single work or (b) a collection of unpublished works by the same author and owned by the same claimant, or (c) multiple published works contained in the same unit of publication and owned by the same claimant. (Examples. A record album containing multiple 15 songs; a single book with multiple short stories)

For more specific instructions about filing through the eCO go to: <http://www.copyright.gov/eco/tips.pdf>.

The next best option for registering basic claims is the new fill-in Form CO. This method is also much faster than the traditional paper forms that are completed manually. To use this form, an applicant should go to the link provided below in order to bring up a .pdf document of a blank CO-form. The applicant then must fill in the required blanks, print it out, and mail it along with a deposit and a check or money order for \$45. The Copyright Office is able to process these forms faster because it uses a special 2-D barcode that digitally provides the information you entered. For this reason, you must submit the original 2d barcode form only. Do not print the form and fill it out by hand and do not send a photocopy of the printed form. If you want to make more than one registration with similar information, keep the form open in your browser after you print it; then make the necessary changes and print the new version. Repeat as needed. Once you close the form, all the information entered will be lost.

The form can be found here: <http://www.copyright.gov/forms/formco2d.pdf>.

The USPTO seems to demonstrate a strong preference for applicants to utilize the online or CO forms before resorting to the original print forms. This is illustrated by the fact that the online filing fee is reduced and paper versions of Form TX (literary works); Form VA (visual arts works); Form PA (performing arts works, including motion pictures); Form SR (sound recordings); and Form SE (single serials) are not accessible on the Copyright

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Office website. However, one can request these forms by going to:
<http://www.copyright.gov/forms/formrequest.html>.

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Certain more complicated applications must be completed on paper and mailed to the Copyright Office with the appropriate fee and deposit. More information regarding these applications and corresponding fees can be found at: <http://www.copyright.gov/forms/> & <http://www.copyright.gov/docs/fees.html>.

All forms that are being physically mailed should be sent to the address below:

Library of Congress
Copyright Office
101 Independence Avenue, SE
Washington, D.C. 20559-6000

When the Copyright Office receives your application, your registration becomes effective that day. Your application is examined to see if the proper fees have been paid and if it meets the standards of U.S. Copyright laws and regulations.

Your registration receives a number and a certificate of registration is issued and mailed to you. The USPTO receives approximately 2,400 applications each business day, so you generally will receive your certificate around 4 months after sending in your registration.

Usually, the USPTO will catalog your application by entering it into its database. Therefore, you must be aware that when you register your claim to a copyright in a work with the U.S. Copyright Office, you are making a public record. All the information you provide on your copyright registration is available to the public and will be available on the Internet. You can search the copyright database by going to:
<http://www.copyright.gov/records/>.

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A Limitation of Copyright Protection: Fair Use

It is important to note in this discussion that registering a copyright with the USPTO does not create an all encompassing absolute protection of the creative work. Whether a person registers federally or not, all copyrights held within the United States are limited by the Fair Use Doctrine. The Fair Use Doctrine is an exception to the exclusive rights held by the owner of the copyright. In general, it allows for the limited use of a copyrighted work by a person or organization that does not have the exclusive right to use that work. This type of use is most often determined to be valid when a person or organization uses another's copyrighted work for purposes of criticism, comment, education, or parody. The general policy behind this doctrine is to allow the public to reap the benefits of this limited use, while only slightly infringing on the rights of the copyright holder. Generally, four factors are considered in determining whether or not a particular use is fair:

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- ✓ the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
- ✓ the nature of the copyrighted work
- ✓ amount and substantiality of the portion used in relation to the copyrighted work as a whole
- ✓ the effect of the use upon the potential market for the work or value of the copyrighted work.

If you do not feel certain in your understanding of the Fair Use Doctrine after reading the four factors above then do not be alarmed because you are not alone. Most legal scholars admit that this type of standard makes the distinction between "fair use" and copyright infringement unclear and not easily defined. Courts look at all surrounding circumstances in each each case. This means there is no specific number of words, lines, or notes that may safely be taken without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission. Therefore, it would be wise to always ask for permission if you become aware of a copyright that you are using in your business. The following are examples of Fair Use:

- ✓ Quotation of excerpts in a review or criticism for purposes of illustration or comment.

- ✓ Quotation of short passages in a scholarly or technical work for illustration or clarification of the author's observations.
- ✓ Reproduction of material for classroom use where the reproduction was unexpected and spontaneous. For example, where an article in the morning's paper is directly relevant to that day's class discussion.
- ✓ Use in a parody of short portions of the work itself.
- ✓ A summary of an address or article, which may include quotations of short passages of the copyright-protected work.

For more information regarding the Fair Use Doctrine go to: <http://www.copyright.gov/fls/fl102.html>

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