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# Entrepreneur's Guide to Intellectual Property - Blog Series: An Introduction to Copyright Law

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Copyright is a form of intellectual property protection for "original works of authorship." Copyright protects against unauthorized "copying" of an author's work. Copyright protection is a relatively inexpensive tool that can be used to protect a company's assets, including computer software and website materials. In certain instances, copyright protection may be used in conjunction with other forms of protection such as trade dress and patent protection. Understanding copyright issues will help to ensure that a business has copyright ownership in its assets.

Copyright protects original works of authorship, including literary, dramatic, musical, artistic, and other works that are fixed in a tangible medium. Copyright is different from a patent or a trademark. A patent protects inventions or discoveries and a trademark protects words, phrases, symbols, or designs identifying the source of the goods or services of one party and distinguishing them from those of others. Copyright does not protect facts, ideas, systems or methods of operation, however, copyright may protect the way these things are expressed. Copyright does not protect names, titles, slogans, or short phrases, which in some cases may be protected as trademarks. Copyright also does not protect "useful articles" (i.e. an object that has an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information), listings of ingredients or contents, or works lacking a "modicum of creativity."

A copyright owner has the exclusive rights to 1) make copies (or authorize copies to be made) of the work; 2) prepare derivative works based upon the work (i.e. variations of the work); 3) distribute the work to the public by sale, license, rental or lending; and 4) display and perform the work publicly. A copyright owner may transfer any or all of these

exclusive rights (e.g. by assignment or exclusive license), or any subdivision of these rights (e.g. by non-exclusive license), to another. The transfer of exclusive rights requires a written agreement, whereas the transfer of non-exclusive rights does not.

The creator of the original expression in a work is its "author." The "author" is also the owner of copyright unless there is a written agreement by which the "author" assigns the copyright to another person or entity, or the work in question is a work "made for hire." The authors of a joint work are considered co-owners of the copyright of the work, unless there is an agreement to the contrary.

A work is "made for hire" when it is prepared by an employee within the context of employment or is specifically ordered or commissioned for use as a contribution to one of the categories of works identified in the Copyright Act (i.e. a collective work, a motion picture or other audiovisual work, a translation, supplementary work, a compilation, instructional text, a test, answer material for a test, or an atlas). If a work is specifically ordered or commissioned, the parties must expressly agree in a signed written instrument that the work is a work "made for hire." The ownership of works "made for hire" does not vest in the author, instead, the employer or the commissioning party is considered the "author" and copyright owner in the first instance.

Works "made for hire" are potential pitfalls for a business. Copyright of a work may not actually be owned by a business if the work 1) is prepared by an independent contractor (i.e. not an employee), 2) is prepared by an employee outside the scope of employment, or 3) is specifically commissioned but does not fall within one of the categories of work identified in the Copyright Act or if there is no signed "work for hire agreement" or assignment. In these situations, it is important for a business to fully understand the employer-employee relationship and/or to have a signed agreement stating that it owns the copyright in a work.

Copyright protection automatically exists for copyrightable works upon their creation in a fixed form. Registration of copyright with the Copyright Office is not a condition of copyright protection, however, the copyright law provides several inducements or advantages to encourage copyright owners to register their works. For example, registration is required before an infringement suit may be filed in court. Registration establishes a public record of the copyright and may eliminate the "innocent infringement defense" (i.e. a claim that the defendant did not realize that the work was protected). Registration also allows for the protection against the importation of infringing copies. Also, if the work is registered prior to infringement (or within 3 months of first publication) then the registrant may be able to elect statutory damages and recover attorneys' fees in the event that a court finds the work to be infringed.

Registration, which is simple and relatively inexpensive, may be made at any time within the life of the copyright. Registration involves submitting to the U.S. Library of Congress a complete copyright application form, a filing fee, and copy of the work to be registered. Copyright registration lasts for the life of the "author" plus 70 years. For works "made for hire", the term of copyright protection is 95 years from publication or 120 years from creation, whichever is shorter.

While optional, a copyright notice placed on copies of a work provides the benefits of informing the public that the work is protected by copyright, as well as the name of the copyright owner. A copyright notice includes 1) the symbol © (the letter C in a circle), the word "Copyright," or the abbreviation "Copr."; 2) the name of the entity that owns the copyright and 3) the year of first publication. A work having a proper notice may also eliminate the "innocent infringement defense."

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