



Newsletter

JANUARY 2006

Professional Legal Assistors

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Our office will be closed for the following holidays:

January 16th, 2006 – Martin Luther King Day

February 20th, 2006 – Presidents' Day

Our next newsletter will be mailed out the beginning of April 2006.

Remember if you have an article that you would like to contribute to our newsletter just fax it to us for our review. We must receive the article no later than March 15th for our April newsletter.

INSIDE THIS ISSUE

- 1 **Professional Legal Assistors Can File Your Copyright Application**

WE FILE COPYRIGHT APPLICATIONS

Effective January 1, 2006, Professional Legal Assistors will file Copyright applications. Our fee is \$150 to prepare and file an application.

What is the difference between a Copyright and a Trademark?

Copyright protects the contents of a project. Trademark protects a name, logo, slogan or tag line.

What is a Copyright?

Copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:



To reproduce the work in copies or phonorecords;

- To prepare **derivative works** based upon the work;
- **To distribute copies or phonorecords** of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

- **To perform the work publicly**, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
- To display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and
- In the case of sound recordings, to perform the work publicly by means of a digital audio transmission.

WHO CAN CLAIM COPYRIGHT?

Copyright protection subsists from the time the work is created in fixed form. The copyright in the work of authorship immediately becomes the property of the author who created the work. Only the author or those deriving their rights through the author can rightfully claim copyright.

In the case of works made for hire, the employer and not the employee is considered to be the author. The copyright law defines a "work made for hire" as:

- (1) a work prepared by an employee within the scope of his or her employment; or
- (2) a work specially ordered or commissioned for use as:
 - a contribution to a collective work
 - a part of a motion picture or other audiovisual work
 - a translation
 - a supplementary work
 - a compilation
 - an instructional text
 - a test
 - answer material for a test
 - an atlas

if the parties expressly agree in a written instrument signed by them that the work shall be considered a

work made for hire....

The authors of a joint work are co-owners of the copyright in the work, unless there is an agreement to the contrary.

Copyright in each separate contribution to a periodical or other collective work is distinct from copyright in the collective work as a whole and vests initially with the author of the contribution.

Two General Principals

- ownership of a book, manuscript, painting, or any other copy or phonorecord does not give the possessor the copyright. The law provides that transfer of ownership of any material object that embodies a protected work does not of itself convey any rights in the copyright.
- Minors may claim copyright, but state laws may regulate the business dealings involving copyrights owned by minors.

WHAT WORKS ARE PROTECTED?

Copyright protects "original works of authorship" that are fixed in a tangible form of expression. The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device. Copyrightable works include the following categories:

1. literary works;
2. musical works, including any accompanying words
3. dramatic works, including any accompanying music
4. pantomimes and choreographic works
5. pictorial, graphic, and sculptural works
6. motion pictures and other audiovisual works
7. sound recordings
8. architectural works

These categories should be viewed broadly. For example, computer programs and most "compilations" may be registered as "literary works"; maps and architectural plans may be registered as "pictorial, graphic, and sculptural works."

WHAT IS NOT PROTECTED BY COPYRIGHT?

Several categories of material are generally not eligible for federal copyright protection. These include among others:

- Works that have **not** been fixed in a tangible form of expression (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded)
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents
- 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: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources).

Copyright Secured Automatically Upon Creation

The way in which copyright protection is secured is frequently misunderstood. No publication or registration or other action in the Copyright Office is required to secure copyright. There are, however, certain definite advantages to registration.

Copyright is secured automatically when the work is created, and a work is "created" when it is fixed in a copy or phonorecord for the first time. "Copies" are material objects from which a work can be read or visually perceived either directly or with the aid of a machine or device, such as books, manuscripts, sheet music, film, videotape, or microfilm. "Phonorecords" are material objects embodying fixations of sounds (excluding, by statutory definition, motion picture soundtracks), such as cassette tapes, CDs, or LPs. Thus, for example, a song (the "work") can be fixed in sheet music ("copies") or in phonograph disks ("phonorecords"), or both.

If a work is prepared over a period of time, the part of the work that is fixed on a particular date constitutes the created work as of that date.

COPYRIGHT REGISTRATION

In general, copyright registration is a legal formality intended to make a public record of the basic facts of a particular copyright. However, registration is not a condition of copyright protection. Even though registration is not a requirement for protection, the copyright law provides several inducements or advantages to encourage copyright owners to make registration. Among these advantages are the following:

- Registration establishes a public record of the copyright claim.
- **Before an infringement suit may be filed in court, registration is necessary for works of U. S. origin.**
- If made before or within 5 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 3 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 record the registration with the U. S. Customs Service for protection against the importation of infringing copies.

Registration may be made at any time within the life of the copyright. Unlike the law before 1978, when a work has been registered in unpublished form, it is not necessary to make another registration when the work becomes published, although the copyright owner may register the published edition, if desired.

FORM OF NOTICE

The notice for visually perceptible copies should contain all the following three elements:

1. **The symbol** © (the letter C in a circle), or the word "Copyright," or the abbreviation "Copr."; and
2. **The year of first publication** of the work. In the case of compilations or derivative works incorporating previously published material, the year date of first

publication of the compilation or derivative work is sufficient. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying textual matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful article; and

3. **The name of the owner of copyright** in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

Example: © 2002 John Doe

The "C in a circle" notice is used only on "visually perceptible copies." Certain kinds of works--for example, musical, dramatic, and literary works--may be fixed not in "copies" but by means of sound in an audio recording. Since audio recordings such as audio tapes and phonograph disks are "phonorecords" and not "copies," the "C in a circle" notice is not used to indicate protection of the underlying musical, dramatic, or literary work that is recorded.

Unpublished Works

The author or copyright owner may wish to place a copyright notice on any unpublished copies or phonorecords that leave his or her control.

Example: Unpublished work © 2002 Jane Doe

INTERNATIONAL COPYRIGHT PROTECTION

There is no such thing as an "international copyright" that will automatically protect an author's writings

throughout the entire world. Protection against unauthorized use in a particular country depends, basically, on the national laws of that country. However, most countries do offer protection to foreign works under certain conditions, and these conditions have been greatly simplified by international copyright treaties and conventions.

WHO MAY FILE AN APPLICATION?

The following persons are legally entitled to submit an application form:

- **The author.** This is either the person who actually created the work or, if the work was made for hire, the employer or other person for whom the work was prepared.
- **The copyright claimant.** The copyright claimant is defined in Copyright Office regulations as either the author of the work or a person or organization that has obtained ownership of all the rights under the copyright initially belonging to the author.
- **The owner of exclusive right(s).** Under the law, any of the exclusive rights that make up a copyright and any subdivision of them can be transferred and owned separately, even though the transfer may be limited in time or place of effect. The term "copyright owner" with respect to any one of the exclusive rights contained in a copyright refers to the owner of that particular right. Any owner of an exclusive right may apply for registration of a claim in the work.
- **The duly authorized agent** of such author, other copyright claimant, or owner of exclusive right(s). Any person authorized to act on behalf of the author, other copyright claimant, or owner of exclusive rights may apply for registration.

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