

Copyrights

10 things you should know to protect your artwork, ads, writings, and software

1. What is a copyright?

Copyright protection exists in any original “expression” of an idea that is fixed in any physical medium, such as paper, digital media, or film. Copyrights cover such diverse things as art, music, technical and architectural drawings, books, photographs, computer programs, and advertisements. Copyrights protect only the expression of an idea, not the idea itself; they do not protect facts, short phrases, or slogans.

Because copyright protection requires originality, it bars others from copying copyrighted work to create substantially similar works. It is possible, however, for two very similar works to be independently created, with each author owning a separate copyright. For example, if two strangers stand next to each other and each take a photograph of the same scene, each would own a copyright in his or her respective photograph.

2. What protection does a copyright give?

Copyright protection encompasses a bundle of exclusive rights that include the right to: (1) reproduce the work; (2) make derivative works; (3) distribute copies by sale, lease, or rental; (4) publicly perform certain works such as plays or audiovisual works; and (5) publicly display certain works such as pictorial or sculptural works.

Compilations of actual data, like names or part numbers, may be copyrightable, but the protection is limited to such things as the selection and arrangement of the information. Facts by themselves cannot be protected by copyright, even if considerable time and expense went into compiling the facts. In appropriate cases, trade secret protection may be available for the factual information.

Copyrights may be licensed or transferred together or separately. For example, an author may grant a book company the rights to reproduce a book, may grant a movie studio the rights to make a movie derived from the book, and may grant foreign distribution rights to other companies.





3. Are websites copyrightable?

A website may embody numerous works protectable by copyrights. For example, protected works may include individual graphic images within web pages, textual content of web pages, or the visual appearance of entire web pages. Copyrights may also protect certain selections or arrangements of data or images embodied in a website, such as a library of thumbnail graphic images of Caribbean fish, or a database of recipes to prepare an authentic Southwestern dish.

Other copyrightable subject matter includes original sequences of computer instructions that: (1) format web page content; (2) hyperlink to other web pages; (3) prompt users for input; (4) respond to user input; and/or (5) carry out other related processes. Examples may include sequences of markup language (e.g., HTML) instructions, CGI scripts, or JAVA modules.

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more than simply download the work for viewing may be granted. To limit the scope of an implied license, a copyright owner should include an express limitation in addition to a standard copyright notice. For example, if the copyright owner intends that the work be viewed only, then the owner may wish to include the following notice: "The recipient may only view this work. No other right or license is granted."

As with any other copyrightable subject matter, website-related works can only receive copyright protection if they are original works of authorship, embodying or fixing the independent expression of the author or authors. Generally, copyright protection arises automatically upon fixing such expression in a tangible medium such as computer memory. While copyright protection is automatic and does not require copyright notice, the owner of copyrights related to a website may further discourage copying by including a copyright notice on protected features.

4. How long does a copyright last?

U.S. copyright protection for works created after January 1, 1978, will last for the life of the author plus 70 years after his or her death. If the work was created for an employer by an employee within the scope of his or her employment, the copyright protection will last for 95 years from the date of first publication or 120 years from the date of creation, whichever is shorter.

If a U.S. work was created before January 1, 1978, the copyright can last for a total of 95 years, assuming that the owner has not inadvertently forfeited his or her work to the public domain by not using appropriate notice or filing the necessary renewals in a timely manner. Determining precisely when the term of the copyright ends and who owns any renewal rights are complex matters for which legal advice should be sought.

5. If I use only 10%, can I use copyrighted works?

If the portion taken is the heart of the copyrighted work or from a widely recognized portion of the work, then infringement can





exist even though less than 10% of the copyrighted work is taken. When considering copyright infringement, the courts analyze whether the accused work is “substantially similar” to the copyrighted work. While the copyright statute provides “fair use” guidelines, these are evaluated case by case. Thus, there is no single “rule” or fixed amount regarding the portion of a work that one must change in order to avoid infringement. If you have concerns about specific situations, you should consult with an experienced copyright lawyer.

6. Must copyrights be registered?

Under current law, a copyright need not be registered until a U.S. citizen wants to file a copyright infringement lawsuit. Early registration, however, offers the copyright holder some significant advantages. For example, if a work is registered before an infringement commences, the infringer may be liable for statutory damages of up to \$150,000 for each copyright that is infringed, and may also have to pay the attorney’s fees incurred by the copyright owner in the lawsuit. It is advisable to register within three months of publication in order to claim the maximum remedies under the Copyright Act.

7. Do I need a copyright notice?

For U.S. works first published after March 1, 1989, a copyright notice is not necessary to maintain copyright protection. Using a copyright notice, however, makes it difficult for other people to claim that they are “innocent” infringers who were misled by the absence of a copyright notice. For U.S. works first published between 1978 and 1989, the omission of a copyright notice from published works could result in the loss of copyright protection unless certain steps were taken in a timely manner. For U.S. works first published before 1978, omission of a copyright notice from published works usually resulted in the loss of any copyright protection.

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A copyright notice consists of the copyright symbol, ©; the year a work is first published; and the name of the copyright owner (e.g., © 2017 Knobbe Martens Olson & Bear LLP). If a sound recording is copyrighted, use ℗ with the first publication date and owner. If the copyrighted material is revised, add the year of the revision to the copyright notice. It is also advisable to add “All rights reserved.”

8. Do I own the copyrights I pay others to create?

You probably do not own the copyright in works you pay independent contractors to prepare, unless you have a written agreement transferring the ownership of any copyrights.

While a business usually owns the copyrights of works created by full-time employees within the scope of their employment, a business has only limited rights to use copyrightable works created by independent contractors. Ownership of works created by employees, but not in their normal course of employment, varies with the facts of each case. Also, certain types of copyrightable works are entitled to “moral rights” protection, which must be considered at the time of any transfer of copyrights.

Ownership issues are often complex. An experienced copyright lawyer should be consulted on such issues.

9. Do foreign countries protect copyrights?

The United States has long been a member of the Universal Copyright Convention, through which copyright protection may be obtained in many foreign countries. In 1988, the United States joined the Berne Convention, through which copyright protection may be obtained in the vast majority of foreign countries.

Obtaining and enforcing copyrights in foreign countries require compliance with the laws and treaties of each individual country. A lawyer knowledgeable in copyright law should be consulted about any specific needs.





10. Where can I get more information on copyrights?

Information on copyright registrations may be obtained from the Register of Copyrights, Library of Congress, in Washington, DC, at www.copyright.gov. The Copyright Office Catalog contains approximately 20 million records for works registered and documents recorded with the Copyright Office since 1978.

The assistance of a lawyer experienced in copyright matters can help avoid problems before they arise. To contact a copyright lawyer or learn more about Knobbe Martens, visit www.knobbe.com.