

## Services & Industries

### Copyrights

We assist clients in obtaining, negotiating licenses and sales of copyrighted works; counseling individuals, as well as businesses to their respective rights in a work and enforcing copyright registrations in a court of law.

#### What is a Copyright?

A copyright is a form of protection, grounded in the U.S. Constitution and granted by law, provided to authors of "original works of authorship," including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture. Copyright protection is afforded to any work that has been reduced to a tangible medium of expression, such as books, manuscripts, drawings, sheet music, CDs, DVDs, software and the like. Copyright provides the author or owner an exclusive right to copy, distribute, perform or display the copyrighted work, and prepare derivatives of the copyrighted work. Examples of copyrights include television shows, movies, music, sculptures, paintings, architectural works, magazines, websites and advertisements.

#### Why Can Registering a Copyright Be Valuable?

It is currently estimated that eighty percent (80%) of corporate assets in the U.S. are intangible assets, which include intellectual property such as copyrights. Although the author of a work has an inherent copyright as soon as the work is fixed in a tangible medium, there are several advantages to an owner for obtaining a copyright registration for a work prior to infringement, including:

- Before an infringement suit may be filed in court, registration is necessary for works of U.S. origin.
- Registration establishes a public record of the copyright claim.
- 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.

## Copyright Registration

In general, to register a work, the following items must be submitted to the Library of Congress in Washington, DC:

- A properly completed application form
- Filing fee (non-refundable)
- A representation (non-returnable) of the work being registered

## Copyright Ownership Rights and Licensing Issues

Pursuant to 17 U.S.C. § 106, the owner of a copyright has the exclusive rights to do and to authorize any of the following:

1. To reproduce the copyrighted work in copies or phonorecords
2. To prepare derivative works based upon the copyrighted work
3. To distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease or lending
4. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly
5. 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, to display the copyrighted work publicly
6. In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

Absent a written agreement to the contrary, such as a work-for-hire agreement, the owner of the copyright is deemed to be the individual who authored the work itself. Such owner has the exclusive rights to do and authorize the actions above, as well as license the work.

## Copyright Disputes and Litigation

Pursuant to 17 U.S.C. § 501(a), anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 122 or of the author as provided in section 106A(a), or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright or right of the author, as the case may be.

An infringer of copyright is liable for either (1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or (2) statutory damages. 17 U.S.C. § 504(a).

The determination of whether a person or entity infringed a copyright is a

factual issue. In order to prove copyright infringement, the plaintiff must show:

1. That the infringing work is "substantially similar" to the copyrighted work
2. That the infringer had access to the copyrighted work