

What is a Copyright?

Copyright is a form of protection provided by the laws of the United States to the authors of original works of authorship that are fixed in a tangible form of expression. Copyrightable works include literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works. Generally, for works that were created on or after January 1, 1978, the term of copyright protection automatically begins from the moment of its creation and endures for the author's life plus an additional 70 years after the author's death.

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 or other person for whom the work was prepared is considered to be the author. A "work made for hire" is a work prepared by an employee within the scope of his employment, or a work specially commissioned and expressly agreed upon in a written instrument. The owner of copyright in a work has the exclusive right to do and to authorize others to do numerous things. Such rights include reproducing the work, preparing derivative works based upon the work, and distributing, performing, or displaying the work publicly. However, these rights are not unlimited in scope. The Copyright Act establishes limitations on the aforementioned rights. The major limitation is the doctrine of "fair use," which precludes infringement when the use is directed toward criticism, comment, news reporting, teaching, scholarship, or research.

Unlike other forms of intellectual property, 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, in contrast to patent law, which requires an application process and the formal granting of a patent. Therefore, no publication or registration or other action in the Copyright Office is required to secure copyright. However, there are definite advantages to registration. First, registration establishes a public record of the copyright claim, which provides constructive notice of your copyright. Second, before an infringement suit may be filed in court, registration is necessary for works of U.S. origin. There is also an incentive to promptly register. If made before or within five years of publication, registration establishes a presumption of the validity of the copyright. If made within three months after publication of the work or prior to an infringement of the work, statutory damages and attorney 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. Finally, 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.

The above-mentioned criteria to register a copyright, as well as the considerations briefly discussed, are merely a cursory overview of the factors that must be examined when deciding to register. Consultation with an attorney is the most reliable and efficient way to acquire the information necessary to make the best decision.