

Copyright Protection and Registration

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)

HOW TO SECURE A COPYRIGHT?

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. For additional information, go to the U.S. Customs and Border Protection website at www.cbp.gov/xp/cgov/import. Click on “Intellectual Property Rights.”

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.

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