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INTELLECTUAL PROPERTY LAW

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Copyrights

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Copyrights

1. What is a copyright?

Copyright protects “original works of authorship” fixed in a tangible medium. This protection is available for both published and unpublished works. Copyright protection exists from the time a work is created in fixed form. It is automatic. No registration is required, although there are important advantages of registration as discussed below.

2. What works can be protected by copyright?

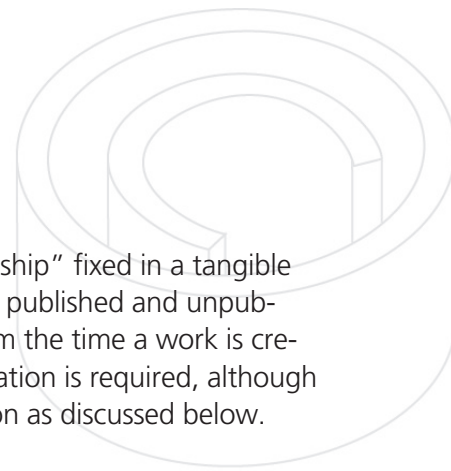
Copyrightable works include the following:

- Literary works including software, databases, manuals, scripts, e-mails, tweets and proposals
- Musical works and sound recordings, including any accompanying words
- Dramatic works, including any accompanying music
- Pictorial, graphic and sculptural works, including toys
- Motion pictures and other audiovisual works
- Architectural works, and
- Websites

3. What does copyright not protect?

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

- Titles such as book titles; names such as band 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).
- Useful articles, except that ornamentation or design elements that are separable from the useful article may be copyrighted. For example a copyrightable vase does not lose copyright protection because it is used as a lamp.

4. Who owns the copyright?

- 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. Section 101 of the copyright law defines a “work made for hire” as a work prepared by an employee within the scope of his or her employment, or a work specially ordered or commissioned for use as a (an):
 - Contribution to a collective work
 - Part of a motion picture or other audiovisual work
 - Translation
 - Supplementary work
 - Compilation
 - Instructional text

- Test
- Answer material for a test, or
- Atlas

Work by a non-employee shall be considered a work made for hire if both parties expressly agree in a signed written agreement. Thus if a non-employee is used to create a work, it is important to get copyright ownership specified in writing; otherwise the non-employee owns the copyright.

- The authors of a joint work are co-owners of the copyright in the work, unless there is an agreement to the contrary. Each can license the copyright, but generally has to share with the co-owner the returns from licensing.
- Mere 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.

5. How long does a copyright last?

The term of copyright for a work depends on several factors, including whether it has been published, and, if so, the date of first publication. As a general rule, for works created after January 1, 1978, copyright protection lasts for the life of the author plus an additional 70 years. For a work made for hire, the copyright endures for a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation, whichever expires first.

6. What are the rights of the copyright owner?

The owner of a copyright has the exclusive right to do and to authorize others to do the following:

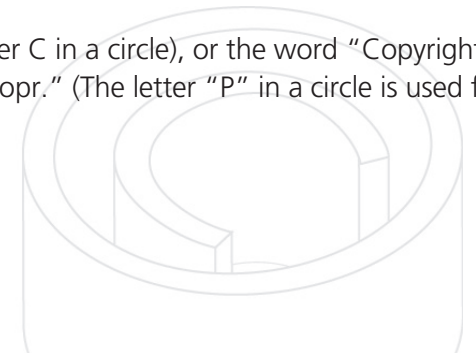
- Reproduce the work
- Prepare derivative works
- Distribute copies of the work to the public by sale or other transfer of ownership, or by rental, lease or lending
- Perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works
- Display the work publicly

7. What is copyright infringement?

As a general matter, copyright infringement occurs when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the permission of the copyright owner. Copyright infringement can easily be avoided – do not copy.

8. How to give notice of copyright

- The use of a copyright notice is not required under U.S. law, although it is beneficial. Use of the notice may be important because it informs the public that the work is protected by copyright, identifies the copyright owner and shows the year of first publication. Furthermore, in the event that a work is infringed, if a proper notice of copyright appears, then weight may not be given to a defendant's claim of innocent infringement in mitigation of damages.
- The notice for visually perceptible copies should contain the following three elements:
 - The symbol © (the letter C in a circle), or the word "Copyright," or the abbreviation "Copr." (The letter "P" in a circle is used for phonorecords.)



- The year of first publication of the work. The 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.
- The name of the owner of the copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.
Example: © 2011 John Doe
- The author or copyright owner may wish to place a copyright notice on any unpublished copies of an unpublished work that leave his or her control.
Example: Unpublished work © 2011 Jane Doe

9. Should you register your copyright?

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 advantages to encourage copyright owners to register their copyrights. Among these advantages are the following:

- Registration establishes a public record of the copyright claim.
- Before an infringement suit may be filed in court, some courts require registration for works of U.S. origin.
- If made before or within five years of publication, registration establishes a presumption 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, all potential remedies are available to the copyright owner in a court action, including statutory damages and attorney's fees, which often

are the most valuable remedies. Otherwise, only an award of actual damages and the infringer's 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.

10. International copyright protection

There is no "international copyright" that protects an author's writings throughout the entire world. Protection against unauthorized use in a particular country depends on the national laws of that country. Most countries do offer protection to foreign works under certain conditions, and these conditions have been greatly simplified by international copyright treaties and conventions.

About Sheldon Mak & Anderson

At Sheldon Mak & Anderson, we recognize that innovation is our clients' competitive edge, and this innovation needs protection. As intellectual property law attorneys, we specialize in offering powerful protection for unique ideas.

Creating Wealth for Our Clients

As intellectual property law attorneys, we can accomplish what most attorneys cannot; we can help create wealth for our clients. Patents, trademarks, copyrights and trade secrets are assets that can be worth many times their cost. By using our skills and experience to protect innovation, we help optimize returns for our clients.