

COPYRIGHT AND TRADEMARK

Intellectual Property Basics that Every Author Needs to Know

Copyright

What is it?

Copyright is a legal device that gives the creator of a creative work the exclusive rights to use that work and the ability to prevent others from using the work. These rights include: The right to distribute, copy, create adaptations (derivative works), and to perform or display the work. To qualify for copyright protection the work must meet the following criteria:

- It must have some **creative** elements created by human intellect. (i.e. Poem v. Telephone book listing);
- It must be **original**;
- It must be in a **fixed tangible** medium of expression. It doesn't protect ideas or facts;
- The work **was not** created by the Federal Government.

When does its protection start?

Immediately. Copyright protection starts as soon as the work is created. But, if the author or owner of the work wants added protection, they will have to register the work with the U.S. Copyright Office.

Why register the work with the U.S. Copyright Office?

A timely registration with the U.S. Copyright Office gives the author or owner of the work greater protection in enforcing infringement claims. Registration gives a copyright owner the ability to recover up to \$150,000 without proving monetary damages, and the opportunity to recover attorney's fees from the infringer. A timely registration means that the author registers work with the U.S. Copyright Office within three months of publication, or before an infringement occurs. Without registration, it is harder for the author or owner to prove the validity of their copyright.

Can the rights be transferred or loaned?

Copyright and other forms of intellectual property protection protect the rights of the owner to use or display the works. However, a copyright owner can assign away or license those rights to another. If the owner wants to retain some rights in the work, and wants to give another the right to use the work for a duration of time, the owner can license those rights to the other. If the owner wants to relinquish all rights altogether, then they can assign or transfer those rights (assignment). All copyright transfers must be recorded with the U.S. Copyright Office to put others on notice of whom to contact regarding obtaining permission.

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How long does copyright protection last?

When the work was first created or published affects the duration of the protection. The general rules are as follows:

- **Published before 1923:** The work is in the public domain
- **Published 1923-1963 and never renewed:** The work is in the Public domain
- **Published 1923-1963 and timely renewed:** 95 years from date of first publication
- **Published between 1964-1977:** 95 years from the date of publication (renewal term automatic)
- **Published after 1978:** The life of the author, plus 70 years after death. If the work is made for hire, anonymous, or pseudonymous, then it's 95 years from the date of first publication or 120 years from date of creation (whichever ends first)
- **Created, but not published or registered, before 1978:** Single term of 120 years from date of creation
- **Created before 1978 and published 1978-2002:** Copyright will expire January 1, 2048

What is the Public Domain?

Works that fall into the Public Domain are no longer protected by copyright, which means anyone may use them without obtaining permission from the author or the author's heirs. The caveat to a work in the public domain is where another author has added a new, unique creative form of expression to the work. In that event, the new, unique form of expression is the only portion that's protected (i.e. variations of Pachelbel's Canon in D).

Are there certain situations where a copyrightable work may be used without the permission of the owner?

In 1992 the Copyright Act of 1976 was amended to allow others to use copyrighted works under certain circumstances. This allowance is known as Fair Use. Fair Use can be used in the following contexts:

- In the course of news reporting
- For educational or teaching purposes
- As a part of research or scholarship
- Criticism, parody and satire

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Trademark

What is a Trademark?

A trademark is a slogan, logo, symbol, distinctive word, or device used to identify a product or service. The key to a trademark is that it must be used in commerce. Just like a copyright, it doesn't need to be registered, but can be registered to gain the additional benefits in infringement litigation.

How long do Trademarks last?

A Trademark lasts as long as it is used in commerce. If the owner of a Trademark fails to use the mark for a continuous period of three years, the mark will be considered abandoned and can be used by others.

What do Trademarks have to do with authors?

Authors and Trademarks intersect in the following ways:

- The mention of a Trademarked name in a book (i.e. Mary grabbed a Kleenex to wipe the tears from her eyes).
- Inadvertent use of a Trademarked logo or design on the cover of a book or as an illustration.
- The authors own personal Trademark to market a line of book sequels (Think Harry Potter).

The mention of a Trademark or the use of a mark of another in a published work without permission from the Trademark owner can lead to legal problems, even if not used to compete with the owner in commerce. Most businesses and corporation do not like their Trademark names to be used so commonly because it causes dilution of their trademark (Think Kleenex, Xerox, Band Aid). Many Trademark owners will also register for copyright protection to cover instances where authors may try to use the mark in non-commercial literary works (this only applies to logos and designs, as names and short slogans aren't copyrightable).

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