

DISCLAIMER: The following is provided as general legal information, and is not meant for specific legal advice. This is not a substitute for legal advice by an attorney. Therefore, if you have specific concerns or interests with regard to this subject matter or any other situation where you may need an attorney, please contact one in your relevant jurisdiction.

What is a Copyright? How do I Obtain a Copyright?

Copyright is a type of intellectual property. Specifically, copyright is aimed at protecting original expressions, such as artwork, books, photos, software, music, video games, videos and movies, and even parts of a websites. Literally, a copyright gives you just that, the right to copy and to exclusively control that right. While, most people believe you must register a copyright with the Copyright Office or place the copyright bug © next to the work, that is not the case. A copyright is automatic, so long as you meet the requirements.

What are the Requirements to Copyright?

Copyright for a MUST contain the following elements: (1) it has to be ORIGINAL – you as the author (creator or maker) of the piece of work must have made it yourself, rather than copied. (2) This original work must be FIXED in a tangible (concrete) medium of expression – *What does that mean? Example 1: if you have a book idea, and wrote the book on paper, the paper is the medium; Example 2: a more modern example, let's say you want to write a computer game (software), when you start coding and have it on your disk (hard drive) – the disk is the medium.* (3) There needs to be CREATIVITY in your work – you can read the word “work” as you had to use your brain to make something different and interesting, and the threshold for this creativity level is it must be beyond listing things in alphabetical or numerical order, such as what is in the white pages. **Once all three (3) requirements are met, there is a copyrighted work and the author has rights afforded to them.**

What are the Rights that Come with Copyright?

The owner of copyright is given a set of rights (sometimes we describe them as a “bundle of sticks”) that can be parsed out for the benefit of the owner such as the sale (via assignment) or licensing of the work. The rights are: (1) reproduce the copyrighted work; (2) prepare derivative works; (3) distribute copies or phonorecords of the work to the public; (4) publicly perform the work; (5) publicly display the work; and (6) in the case of sound recordings, perform publicly through digital audio transmission. An example of separating rights to seek economic benefit can be seen with comics; the author allows reproduction and distribution by publishing companies, the adaptation of the comic book into a movie and its distribution to theaters by movie companies, and all of this possible because the comic book author negotiates with various entities over the right to make copies, derivative works, distribute the works and/or copies, etc . . .

Why Register my Copyright if it is Automatic?

In a copyright infringement suit the owner of an unregistered copyrighted work has to prove actual damages or profit off of the infringed upon work. This tends to be complex and increases the cost of a suit. With registration the copyright holder is entitled to statutory damages and possibly attorney fees.

Other Copyright Considerations for a Business Owner

Assignment/Licensing Agreements – If you have a valuable work you can sell it in an assignment or what may even be more fruitful is limit the type of copying and the amount of time to copy in a licensing agreement with another business entity. This type of agreements must be reduced to writing due to the nature of IP.

Independent Contractors vs. Employees – If you are having someone create or make works on your behalf, and that person is an independent contractor, as opposed to an employee, it is very important for the purposes of ownership over the copyrighted work be determined. Therefore, if your intent is to be the copyright holder a proper assignment of the work in question should be drafted.