

Intellectual Property For Authors and Inventors

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Topics to Cover

- What is Intellectual Property?
- Who Owns a Work?
- Copyright Basics:
 - (1) Why Register? (2) How to Register
- Risks, Liabilities and Opportunities
- Fair Use
- Copyright Clearance Centers
- Publishing
- Common Questions and Misconceptions
- Questions and Answers



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What is Intellectual Property?

intellectual property

Noun Law.

property that results from original creative thought, as patents, copyright material, and trademarks.

Origin:

1840–45, Americanism

intellectual property. Dictionary.com. Dictionary.com Unabridged. Random House, Inc. [http://dictionary.reference.com/browse/intellectual property](http://dictionary.reference.com/browse/intellectual%20property) (accessed: October 20, 2013).



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Types of Intellectual Property

Copyright

- *Original material* in the form of a written compilation such as a manuscript, musical piece, design, work of art.
- Registered with the US Copyright Registration Office at the Library of Congress
- Law: The Copyright Act of 1976, Title 17 of US Code

Trademark / Patent

- Trademark: A name, symbol, figure, letter, word, or mark adopted and used in *commerce* to differentiate and distinguish goods and services of a particular vendor or merchant.
- Patent: An original invention which is distinct from all prior inventions either *in design or utility*.
- Registered with the US Patent and Trademark Office



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Intellectual Property is an Asset

- In Business: An Author or Inventor should protect its work because it adds value to the enterprise and is an asset.
 - Recover Money spent on Research and Development
 - Protect channels of distribution, brand equity
- Copyrights can be used protect work even when it is not used in commerce
 - Protects the Author's reputation
 - May have economic value
 - May be a significant contribution to society even without economic value
 - Scientific, Medical and Historic Research
 - Musical and Artistic Works
 - Manuscripts and Literary Works



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Who Owns the CR of a Work?

- In general, the author or inventor, whether or not registered, is the owner of the work.
 - Registration is clear and convincing evidence of ownership
 - Possession ≠ Ownership
- Work for Hire
 - Exception to standard rule on ownership
 - Work created at the direction of and for the use of a specific third party, other than the author



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Work for Hire

- Employees writing or inventing for their employer
 - Typically, the business will have a policy and make it clear to employees that work invented and authored during work hours with work tools is the sole property of the employer.
 - Often, an employee will be asked to sign a document assigning his or her work to the company.
- Independent Contractors typically have agreements that indicate who owns the work upon completion and payment.
 - Rights can be specifically sold and reserved.
 - Photographers are known for keeping the rights so that they can be paid for reprints and reuse.
 - Song Writers typically receive royalties when their works are played or used



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What does the Owner of a Copyright receive?

- Section 106 of the 1976 Copyright Act
 - EXCLUSIVE RIGHT TO DO and to AUTHORIZE OTHERS TO DO the following:
 - **Reproduce** – in copies or phonorecords
 - **Prepare** – derivative works based upon the work
 - **Distribute** – sale, transfer, rent, lease, lend, etc.
 - **Perform**
 - **Display**



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How to Secure a Copyright

- Copyright Secured Automatically Upon Creation
 - the work is “created” when it is fixed in a copy or phonorecord for the first time,” i.e., its no longer simply an idea.
 - “Copies” are material objects from which a work can be read or seen either directly or with the aid of a machine.
 - “Phonorecords” are material objects embodying fixations of sounds, such as cassette tapes, CDs, or vinyl disks.
- No publication or registration or other action in the Copyright Office is required to secure copyright. There are, however, definite advantages to registration.



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Advantages of Copyright Registration

Registration not a condition of copyright Protection

- What are the advantages of registration:
 - Registration establishes a public record of the copyright claim
 - No registration, no infringement suit in US
 - Prima facie evidence of validity, if registered before or within five (5) years of publication
 - Statutory damages and attorneys' fees in a successful litigation, if registered within three (3) months after publication (otherwise, only actual damages and profits)
 - Recordation with US Customs for protection from importation of infringing copies



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How to File a Copyright

Submit an application for an Original Claim to Copyright with the US Copyright Office

- <http://www.copyright.gov/>
- Phone Numbers:
 - 202-707-3000
 - 1-877-476-0778 (toll free)
- Main Mailing Address:
 - Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

The screenshot shows the homepage of the United States Copyright Office website. The header includes the Library of Congress logo and the site title 'Copyright United States Copyright Office'. A search bar is located in the top right corner. Below the header is a navigation menu with tabs for 'About', 'News', 'Publications', 'Forms', 'Law', 'Licensing', 'Registration', and 'Search Records'. The main content area is divided into several sections: 'Hot Topics', 'SPECIAL PROJECTS' (with links for 'One-Year Update' and 'Two-Year Plan'), 'ANNOUNCEMENTS', 'COPYRIGHT MATTERS LECTURE SERIES', and 'REGISTER' PUBLIC STATEMENTS' (with links for 'U.S. Copyright Office Announces Ringer Fellowships and Kaminstein Scholars', 'Names Brauneis of The George Washington University', 'Marrakesh Treaty', 'Hearing Testimony', '2013 Manges Lecture "The Next Great Copyright Act"', 'Keynote: The Curious Case of Copyright Formalities', 'Keynote: Orphan Works & Mass Digitization', and 'Obstacles & Opportunities'). The right side of the page features several columns of links: 'About' (Copyright Basics, FAQs, Fees, etc.), 'How to Register a Work' (eCO Login, Electronic Copyright Office), 'How to Record a Document' (Record a Document), 'Search Copyright Records' (Registrations and Documents, Search Request Estimate, etc.), 'Publications' (Circulars and Brochures, Forms, Factsheets, etc.), 'Licensing' (Compulsory License), 'Budget' (Budget Justification, Enacted Budget, Fiscal 2014 Budget Testimony), 'Law and Regulations' (Copyright Law, Regulations, Proposed Legislation, etc.), 'Congressional Testimony' (Online Piracy, Administration & Budget), and 'Related Links' (Copyright Royalty Board, Patents and Trademarks, Intellectual Property Enforcement, etc.). The footer contains a row of links: 'Contact Us', 'Hours & Location', 'Mail Delivery', 'Legal Notices', 'Freedom of Information Act (FOIA)', 'Library of Congress', and 'USA.gov'.



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Registration Process

Three (3) Components of Copyright Registration

1. A completed APPLICATION (either electronic or paper)
 - Online registration through the electronic Copyright Office (eCO) is the preferred way to register basic copyright claims
 - » Advantages of filing electronically:
 - Lower filing fee
 - Faster processing time
 - Online status check
 - Secure payment options
 - Upload certain categories of deposits
 - » Basic claims include: (1) a single work, and (2) certain multiple unpublished and published works
 - Paper Applications – you can register using paper forms; the forms can be found at <http://www.copyright.gov/forms/>



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Registration Process Continued

Three (3) Components of Copyright Registration

2. A non-refundable filing fee: \$35 (online); \$65 (paper)
3. A non-returnable deposit: that is, a copy or copies of the work being registered and deposited with the Copyright Office

And now we wait...and wait...and wait. It can take up to six (6) months to receive a certificate of registration (and that is if everything on the application is accurate and there are no other issues)



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Risks, Liabilities and Opportunities

- What are the risks of not registering your copyright?
 - Challenging task of establishing or proving validity
 - If you are unable to prove validity, you may not have a claim to the sole right of reproduction, derivative works, distribution, performance, display, etc.
 - No registration, no infringement suit in US
 - Lesser claim for damages
 - Risk of importation of infringing copies
- Other concerns and liabilities?
 - Impact on the value of your assets and your company
 - Cost of Infringement Lawsuit



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Risks, Liabilities and Opportunities Continued

- What else can you do to protect copyright?
 - Copyright Notice – although not require, it's a good idea because it helps prevent confusion as to authorship or ownership
 - Add Watermarks and Metadata for digital works – deters copying
 - Simple Google search
 - Cease and desist letter



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Fair Use

- What is “fair use”?
 - Codified in 1976, Section 107
 - Limitations to the rights provided to a Copyright Owner
 - The “fair use” of a copyrighted work is not copyright infringement, even if such use violates Section 106 (the provisions identifying the exclusive rights of a CR Owner)
 - Section 107 explicitly identifies the following non-exclusive list of fair uses: critiques, news reporting, teaching, scholarship, and research



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Fair Use Continued

- What factors are considered to determine whether a particular use is a fair use?
 - The purpose and character of the use (i.e., commercial, educational, transformative, or reproductive)
 - The nature of the copyrighted work (i.e., fictional or factual, degree of creativity)
 - The amount and substantiality of the portion of the original work used
 - The effect of the use upon the market (or potential market) for the original work



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Copyright Clearance Center ASCAP, Getty Photos and the like

- Aggregators of licenses for use.
 - CCC and ASCAP are not for profit and redistribute proceeds to artists
 - Getty Images is a stock photo house that sells images for its contributing photographers
 - There are others, these are just examples
- Authorized by authors, artists and owners to license others for the use of various works.
- End-users pay annual, quarterly, monthly or per use fees.
- Different than an agent in negotiating with a publisher



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Publishing Your Work

- Third Party or Professional Publisher
 - Negotiate a Royalty Agreement
 - Advances before completion of work at set milestones
 - Royalty on publication
 - Set off of Advances
 - Use
 - Geography
 - Media
 - Licenses for characters and themes
 - Duration
 - Good Faith Commitment of publisher to distribute
 - Rights on Termination
 - For cause
 - Without cause
 - Future Books



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Publishing Your Work Continued

- Agents
 - Obligations
 - Rights
 - Exclusivity
 - Fees
- Self-Publishing
 - Most common
 - Editing
 - Formatting
 - Amazon
 - Online formatting
 - Editors for a fee



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Some Considerations for Authors

- Avoid
 - Plagiarism
 - Defamation (libel)
 - Misquotes and Misstatement of facts
- Use fact checkers, both electronic and human
- If you use editors, read and reread to ensure no change in intent causing a potential risk.
- Use of real people, businesses, organizations and places in fiction should come with a caveat regarding fictionalization.
 - Consider risk of defamation



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Protecting Your Assets

- Creating Trusts and Entities to Hold Intellectual Property separate from other Operating Businesses
- Using the Entity as a Licensor only
- Managing the contracts, uses and stream of income
 - Ensure proper use
 - Conduct audits
 - Hire professionals to Monitor Use



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Common Questions and Misconceptions

- ISBN – what is it, what does it do, and do I need it?
- Use of Other Material
 - Plagiarism v. Copyright
 - Not registered or no notice \neq not copyrighted
 - If I cite, I'm OK
 - Public accessibility \neq Public Domain
 - 10%
- Do I need a lawyer if I have an agent or if I'm with a reputable publisher?



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Thank you for your time -----

QUESTIONS AND ANSWERS



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