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Frequently Asked Questions: Copyright

By Michael M. Ratoza

Q: What is a copyright, and what does it protect?

A: Copyright protects almost every kind of original, creative work, including computer software, product designs, architectural sketches, advertising jingles, building plans, and graphic designs, as well as traditional works of authorship such as poetry, books, movies, songs, and more. Copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way those things are expressed.

Q: Do I have to register my work to have a copyright?

A: No. Your work is protected in the U.S. automatically by copyright the moment it is created and fixed in a tangible form. Some states, including California, protect creative material under state law when there is no tangible fixation (e.g., an extemporaneous public performance).

Q: Why should I register my work in the U.S. if copyright protection is automatic?

A: Registration gives you the right to protect the work you own. (Owning an unregistered copyright is a little like owning a house but not having the deed to it.) As a general rule, you must register your work if you wish to sue for infringement. Timely registration can also preserve your rights to statutory damages, attorney fees, and other benefits. Further, registration may create prima facie evidence of your ownership, may avoid public confusion as to ownership, and may reduce the likelihood of innocent infringement.

Q: How long does the registration process take?

A: Generally, our office can prepare and file a U.S. copyright application within a few days. The Copyright Office, though, can take several months to issue a certificate of registration. (Usually the registration is back-dated to the date your completed application was submitted.) Expedited processing—usually less than a month—may be available for an extra fee in an emergency.

Q: How long does a copyright last?

A: This depends on when and where the copyright was created. Generally, copyright protection in the U.S. for new works created after 1976 will endure for the life of the author, plus another 70 years. Copyright in a work made for hire will last for 95 years from first publication or 120 years from creation, whichever period expires first. There are special rules for joint authors, works created before 1977 and certain foreign works.

Q: When I have my employee create documents or computer code or other copyrighted work, my firm owns the copyright, correct?

A: Generally, the copyright to work is owned by an employer when created by an employee under the terms and scope of employment. But there may be some exceptions.

Q: The same is true when my firm contracts with an outside party to create documents or computer code or other copyrighted work; my firm owns the copyright, correct?

A: Generally, the copyright to work created by a third-party independent contractor is



owned by the third-party independent contractor, unless there is a written "work for hire" or assignment agreement. But there may be some exceptions.

Q: Can I protect my copyright by mailing a certified copy of the work to myself?

A: Mailing a copy of your work to yourself does not create a copyright interest, nor does it give you enforcement rights. It is the creation of the work that creates the copyright interest and, generally, it is the registration that provides enforcement rights and remedies.

Q: Can the ownership of a copyright be assigned or transferred from one person to another?

A: Yes, but only if the assignment is in writing—there are no exceptions. If the copyright is registered, you should record the assignment documents with the Copyright Office. Of note—U.S. copyright law allows the assigning party the right to terminate the assignment in certain circumstances and to retake copyright ownership.

Q: How can Bullivant Houser Bailey help me protect my copyright?

A: We can register your copyright for you—through ordinary registration, or through expedited registration if you need to take prompt steps to protect your rights. We can file suit on your behalf, or defend you in litigation over a copyright. We can also provide assistance concerning licensing, assignment and collateralization of copyright, plus provide guidance regarding co-authorship rights and protection, publishing arrangements, employee and independent contractor copyright arrangements, music, Internet, software (including open source), film, video, multimedia, and numerous other copyright issues.

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