

Fundamentals of Copyright Law



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What is a Copyright?

A copyright is a set of rights given to authors and artists to control the use of their original creative works. Copyright law exists to promote and further artistic creativity. As a result, copyrights provide incentives to artists by providing exclusive rights for commercial exploitation of original works. These rights include the right to exclude others from making and distributing copies of a work, creating derivative works, and performing or displaying a work publicly. Examples of works that can be subject to copyright protection include computer software, literature, music, sound recordings, architecture, audiovisual works, pictures, graphic art, jewelry, and sculptures.

One of the keys for protection is that the work has to be “fixed in a tangible form of expression.” This means that the work must be recorded in some fashion such as by writing it down or filming. For example, an impromptu performance that is not recorded may not be subject to copyright. If that performance is of a song in which the lyrics and the accompanying instrumental are written down, then the performance may be covered by the copyright in the lyrics and instrumental sheet music. Copyrights are also limited by several exceptions that promote the public interest, the most important of which is fair use. Fair use permits limited use of copyrighted material without acquiring permission from the copyright owner. Examples of fair use include use for criticism, comment, parody, making backup copies, news reporting, and teaching.

Applying for a Copyright

A copyright exists as soon as an original work is fixed in a tangible medium. That is, it is not necessary to register a work with the government to own the copyright in the work. Rather, a copyright is automatically granted by law. Registering the work with the government, however, has several advantages. In the U.S., the United States Copyright Office handles copyright registration. To register, a copyright owner needs to file a copyright application, pay an associated filing fee, and deposit a copy of the copyrighted work.

Advantages of copyright registration include:

- Establishing a public record of the copyright claim.
- Before an infringement suit may be filed in court, registration is necessary for works of U.S. origin.
- If made before or within five years of publication, registration will establish the initial evidence in court of the validity of the copyright.
- If registration is made within three months after publication of the work or prior to an infringement of the work, damages defined by statute and attorney's fees

will be available to the copyright owner in court actions. Otherwise, the copyright owner would have to prove how much money it lost and how much the infringer profited.

- Registration allows the owner of the copyright to record the registration with the U.S. Customs Service to prevent importing of infringing copies.

For international copyright protection, the Berne Convention—a treaty signed by more than 180 countries, including the United States—provides rights in each of the countries that are part of the treaty. Though copyright laws vary between countries, the Berne Convention provides a basis to extend protection within those countries to works created elsewhere. That is, any country that is part of the Berne Convention must treat the copyright of works from other countries at least as well as those of its own citizens. Moreover, the Berne Convention provides protection as soon as a work is fixed in a tangible medium. Thus, a work is automatically protected and there are no formal requirements to gain copyright protection in any of the countries that are part of the Berne Convention.

About the Author

Dev Batta is a Senior Associate and admitted to practice law in California, Virginia, and in front of the United States Patent and Trademark Office (USPTO). Mr. Batta has over 10 years of experience as an intellectual property and technology lawyer. Prior to joining Avasant, he worked for several large law firms, including Cooley and Locke Lord. Mr. Batta has successfully prosecuted over 100 patent applications in technologies ranging from driverless vehicles, E-commerce, drones, content delivery, and Internet advertising. He also represents both plaintiffs and defendants in patent and trademark litigations and proceedings both in Federal Court and in front of the USPTO.

About Avasant Law

Avasant Law is a law firm that includes attorneys dedicated to all aspects of technology law, including technology transactions, business process sourcing, patents, trademarks, privacy, and information security.

Avasant Law has developed an integrated offering with its management consulting firm, Avasant LLC, to deliver comprehensive client solutions. Though the businesses are separated to ensure the traditional protections of a lawyer-client relationship, clients can be sure that their transactional team consists of the best-in-class attorneys, strategists, financial experts and technology experts. The family of Avasant companies provides clients with a unique matrix of resources to solve next generation challenges.

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