



EXPRESS YOURSELF AND PROTECT YOURSELF

Welcome to another edition of *Protecting Your Creativity* by The Livingston Firm. Each edition of *Protecting Your Creativity* will discuss various aspects of intellectual property law and related business matters. This edition discusses the importance of protecting one's expressions as fixed in a tangible medium, which is better known as a copyright.

Article I, Section 8, Clause 8 of the U.S. Constitution, also referred to as "the Copyright clause," grants Congress the power to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. The U.S. Copyright law is codified in title 17 of the U.S. Code and provides copyright protection for a plethora of original works of authorship, including literary works, musical works, dramatic works, pantomimes and choreographic works, pictorial, graphic and sculptural works, sound recordings and architectural works.

Copyright protection is designed to protect an author from another person or entity copying the work such that the copied work is "substantially similar" to the original work. Copyright protection does not protect against independent creation of a similar work.

An author secures a copyright as soon as his/her/its original work is "created," that is, when the work is fixed in a tangible medium for the first time. Thus, an author need not apply for copyright registration in order to have copyrights. However, there are several advantages to obtaining a copyright registration.

First, a registered copyright establishes a public record of the work claimed in the copyright. Second, the registration permits the owner of the copyright to record the registration with the U.S. Customs Service, thereby stopping the importation of infringing copies of the work from foreign countries. Third, if the application for registration is made before or within five (5) years of publication of the work, then the registration serves as *prima facie* evidence of the copyright's validity and the facts stated in the copyright certificate of registration in a copyright infringement suit.

Perhaps even more important, a copyright registration must be obtained for works of U.S. origin prior to filing a suit for copyright infringement. Thus, if the work is being infringed, the author or owner of the work cannot sue to enforce his/her/its rights to the work unless and until a copyright registration has been obtained. Although a copyright registration may be made at any time during the life of the work, the importance of obtaining a registered copyright prior to having one's work infringed is often realized too late. For example, if an application for copyright registration is filed after an infringement has already commenced, a copyright owner loses the right to seek statutory damages and attorneys' fees and must prove actual damages and lost profits. On the other hand, if an application for copyright registration was applied for prior to an infringement, the copyright owner has the option of seeking statutory damages, which range from \$750.00 for innocent infringement to \$150,000.00 for willful infringement for each copyrighted work that is infringed, or actual damages and profits and attorneys' fees.

There are several types of copyright applications available. Therefore, prior to filing for copyright protection, one must determine the proper form of copyright protection to obtain. For instance, copyrighted architectural drawings are infringed when the building depicted in copies of the architectural drawings is constructed. However, recent case law has held that technical drawings are not infringed by using copies of the technical drawings to manufacture the device protected in the technical drawing. Therefore, it is important to understand the differences between the several types of copyright protection one may obtain and file for copyright protection accordingly.

Determining whether copyright protection is available for a work and what form of copyright protection should be sought is a service that should be performed by attorneys who specialize in copyrights and other forms of intellectual property protection (i.e., patents, trademarks, etc.).

The Livingston Firm specializes in all areas of intellectual property law including patents, trademarks, copyrights, trade secrets, franchising, litigation and business law. As the largest full-service intellectual property law firm in Southwest Florida with over forty years of combined experience, The Livingston Firm can be there to assist you from beginning to end with protecting your ideas and inventions and getting those ideas and inventions to market.

Thank you for taking the time to read this edition of Protecting Your Creativity. If you are in need of our services then please contact us to schedule an appointment.

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