

**UNITED STATES  
PATENT AND TRADEMARK OFFICE**



# Copyright basics and considerations for entrepreneurs and small businesses

Brian T. Yeh, Attorney-Advisor

Office of Policy and International Affairs

May 27, 2021

*Images used in this presentation are for educational purposes only.*

UNITED STATES  
PATENT AND TRADEMARK OFFICE



# The purpose of copyright

“The Congress shall have 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.**”

- Article 1, Section 8, Clause 8, U.S. Constitution



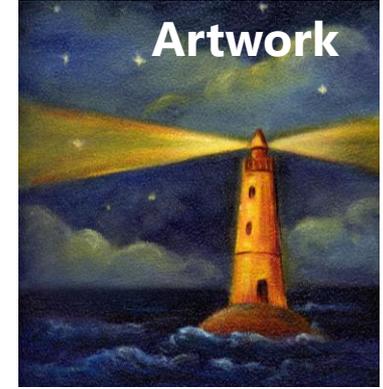
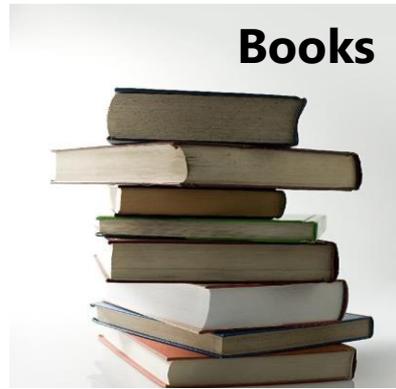
# What is copyright?

Copyright is a form of legal protection provided to the authors of “original works of authorship fixed in any tangible medium of expression.”

17 U.S.C. § 102(a)



# What does copyright protect?



... **plus** many other forms of creative works, including: plays, choreography, architecture, software, and compilations

# Why should I care about copyright?

Some business assets that **may** be protectable by copyright include:

- Advertising and promotional materials
- Instructional manuals
- Educational materials
- Software
- Website
- Artistic elements of logos (e.g., product logo artwork)
- Product design & packaging (rarely protected by ©)

# Requirements for © protection

- Must be an **original** work of authorship, i.e., work must be of independent creation (not copied from other works)
- Must exhibit a “modicum of creativity” – a very low level
- No requirement that work be novel/unique or have aesthetic merit
- Must be fixed in a tangible form of expression that is perceptible either directly or with the aid of a machine or device

# What works are not protected?

- Not fixed in a tangible form of expression, 17 U.S.C. § 102(a)
- Titles, names; familiar symbols or designs; mere variations of lettering; mere listings of ingredients or content, 37 CFR § 202.1(a)
- Individual words and short phrases, 37 CFR § 202.1(a)
- Ideas, procedures, concepts, principles, 17 U.S.C. § 102(b)
- Works of the U.S. Government, 17 U.S.C. § 105

# A bundle of exclusive rights

- Make copies of the work
- Prepare derivative works (i.e., adapt)
- Distribute copies of the work
- Publicly display the work
- Publicly perform literary, musical, dramatic, choreographic works, pantomimes, or audiovisual works
- Publicly perform a sound recording via a digital audio transmission



# Securing protection

- Copyright protection is secured **automatically** upon creation (fixation). A work is “created” when it is fixed in a copy for the first time.
- No publication or registration is required. (There are, however, certain advantages to registration.)

# Why register?

- Puts others on notice of copyright claim
- Required to file suit in federal court (for works of U.S. origin)
- Provides prima facie evidence of validity of the copyright and facts in certificate (if made within five years of publication)
- Registration may be recorded with U.S. Customs and Border Protection (CBP) to help prevent importation of pirated products.
- Statutory damages and attorney's fees may be available in litigation but only if registration is obtained within three months after publication of the work or prior to infringement of the work.
- Easier to license work, collect royalties, and enforce rights outside of court

# Registration

- Registration is administered by the U.S. Copyright Office, which is part of the Library of Congress
- Registration may be made using paper forms or submitted online at [www.copyright.gov](http://www.copyright.gov)
  - Check out eCO tutorials at [copyright.gov](http://copyright.gov) for single, standard, and supplementary applications



# Registration process

A copyright owner must:

1. File an application
2. Pay a filing fee (\$45 - \$65 for e-filing and \$125 for paper filing)
  - Current fees at [www.copyright.gov/docs/fees.html](http://www.copyright.gov/docs/fees.html)
3. Deposit copies of the work at the Copyright Office. Some of the works may be selected for the collections of the Library of Congress.



# Notice

- Forms of notice: ©, the word "Copyright," or the abbreviation "Copr.", year of publication, and name of the copyright owner

© 2021 Jane Doe.

- **No notice is required** (for works published on or after March 1, 1989).

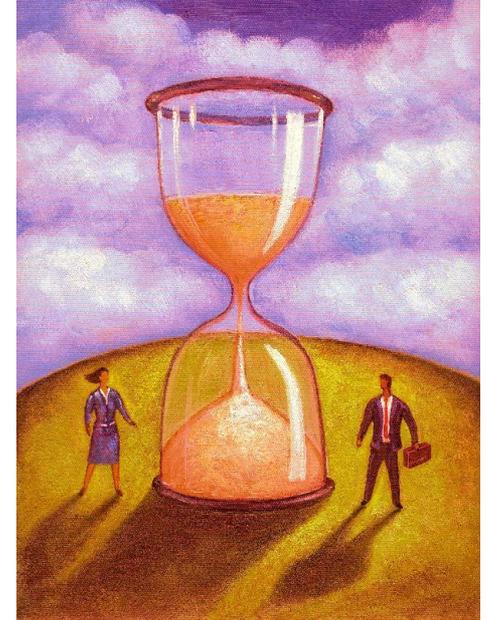
# Why use a copyright notice?

- Informs the public that the work is protected by copyright
- Identifies the copyright owner
- Shows the year of first publication
- May benefit the owner against an “innocent infringer” defense (which is not a defense against infringement, but may bear on the remedies)
  - TIP: Provide sufficient additional information so that a third party knows how to contact you to obtain permission to use the work.

# Term of copyright

For works created on or after January 1, 1978:

- **Life + 70:** In the U.S., copyright subsists from creation and lasts for the life of the author, plus 70 years after the author's death.
- **95 years from publication:** If the author is not a natural person, then copyright lasts 95 years from publication or 120 years from creation, whichever expires first.



# Copyright infringement

Infringement is a violation of any of the exclusive rights of copyright.

17 U.S.C. § 501



# Copyright infringement remedies

- Actual damages
- Statutory damages
- Injunctions, including temporary and permanent
- Seizing infringing copies
- Destroying forfeited infringing copies and the machinery and equipment used to produce them
- Attorney's fees and costs



# Limitations & exceptions - Examples

- First sale doctrine
- Special exceptions for libraries, archives, and teaching
- Certain statutory licenses
- Certain television & radio exceptions
- Reproduction for those with disabilities
- Single software copy for archival purposes

# Fair use

- Allows the public to make reasonable use of copyrighted material, under particular circumstances, without copyright holder's consent or royalty payment
- Use for purposes such as:
  - Criticism or comment
  - News reporting
  - Teaching, scholarship or research



17 U.S.C. § 107



# Four factor balancing test

Courts weigh the following statutory factors:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

17 U.S.C. § 107



# Fair use considerations

- Is the use of the work “commercial,” or for nonprofit purposes such as criticism, commentary, education, or news reporting?
- Is the nature of the work factual/functional or fictional/creative?
- Is the use “transformative,” “altering the original with new expression, meaning or message” to the copyrighted material?
- How much of the copyrighted material is being used?
- Does the use impact an existing market for the work, or one that is likely to be exploited in the future?

**NOTE:** There is no bright line rule for what constitutes fair use. Judicial opinions on fair use are inconsistent and often unpredictable. It is a case-by-case evaluation by the courts.

# For more information...

- U.S. Copyright Office
  - <http://copyright.gov> (Be sure to check out Circular 1, "Copyright Basics" as well as the Compendium of U.S. Copyright Office Practices.)
- Stanford Copyright and Fair Use Center
  - <http://fairuse.stanford.edu/>
- "Copyright Term and the Public Domain in the U.S." [Chart]
  - <http://copyright.cornell.edu/resources/publicdomain.cfm>
- "Crash Course in Copyright" from University of Texas
  - <http://copyright.lib.utexas.edu/>
- "Copyright Navigator" by Lionel S. Sobel
  - <http://navigator.carolon.net/>





# Thank you!

**Brian T. Yeh**

Attorney-Advisor

Office of Policy and International Affairs

U.S. Patent and Trademark Office

[brian.yeh@uspto.gov](mailto:brian.yeh@uspto.gov)

[www.uspto.gov](http://www.uspto.gov)