

## COPYRIGHT PROTECTION OF LITERARY, ARTISTIC AND SOFTWARE WORKS

There are several different steps related to copyright protection, some of which you must do yourself and others which we do for you. Some must be performed with the created work itself and others require communication with the **Copyright Office** of the U.S. Library of Congress in Washington, D.C. This brochure will aid in understanding these different aspects of copyright law and copyright registration proceedings.

### WHAT IS A COPYRIGHT?

A **copyright** is a property right which an **author** possesses in the literary, artistic or software **work** which he has created. Copyright law protects the author from having the work **copied** by someone else. It does **not** protect against someone **independently** creating a similar or even identical work which has not been copied from the author's work.

### AUTHORSHIP AND OWNERSHIP

The **author** is generally the person who has initially created the work. The term author includes writers, artists, composers, choreographers, programmers and similar people. If more than one person contributes to the work, they will be coauthors. A multi-component work (such as a motion picture) may have different authors for different parts of the work, such as script, music, choreography, sound, photography, etc. Under some circumstances, especially works created by employees as part of their employment, their company or employer is legally the author under a doctrine known as **work made for hire**.

The author is initially the owner of the work. However, an author can transfer **ownership** of the copyright to another, usually by means of an **assignment**. Such a transfer can be **recorded**. The work itself and the copyright in the work are two separate things, and transfer of one does **not usually** include transfer of the other. For instance, the writer of a book does not transfer his copyright just by selling copies of the book. If one person or company is producing a work to which a number of different independent writers, artists, musicians, programmers, etc., are contributing, it may be necessary for the producer to have an individual copyright assignment agreement with each of those authors in order to consolidate all of the separate copyright rights in the work. Simple employment contracts with each of those authors to contribute to the work ordinarily do **not** transfer those authors' individual copyright rights to the producer.

### SCOPE AND LIMITS OF COPYRIGHT

Almost all **original** literary, artistic and software works can be copyrighted. These include paintings, books, photographs, music, sculpture, articles, magazines, poetry, dance routines, computer programs, and other creative works. However, one cannot copyright inventions (but patents may apply); industrial designs (designs of utilitarian objects); scientific principles; names, slogans or titles

(except perhaps as trademarks); or works which do not have at least some minimum degree of creative content (such as blank calendars). Some types of forms and some compilations of factual data may have sufficient creative content in layout or selection to qualify for copyright protection; also some proprietary compilations of data or software code may be protectable as trade secrets.

A key principle of copyright law is that a copyright protects **only** the author's **expression** of the particular theme or idea, **not** the idea or theme itself. Basic ideas, dramatic themes, historical events or factual information cannot be monopolized by any author. For instance, a history book author is protected against someone copying the wording used in that book, but the author cannot prevent someone else from independently writing his or her own book about the same historical events. How expression compares to idea or theme is a complicated subject which depends on the nature of the work, and should be discussed with a Gordon & Rees attorney.

## **CREATION AND DURATION OF COPYRIGHT**

An author's copyright starts as soon as the author **creates** the work in a **tangible form** from which it can be **perceived** in some manner. Perception may be direct, as by reading a book or viewing a painting. However, where the work cannot be directly seen or heard, it may be perceived through some mechanical or electronic device, as by using a computer to read a software program which is recorded magnetically on a computer disk or using an audio system to listen to CD-recorded music.

For works created after 1977, a copyright lasts for the length of the author's life plus 70 years. If the author is not a person (such as in a work for hire situation) the term is the shorter of 95 years from publication or 120 years from creation of the work.

## **NOTICE, REGISTRATION AND DEPOSIT OF COPIES**

In 1989, the United States joined an international treaty known as the Berne Convention. Since then, as compared to prior U.S. law, an author of a new work obtains copyright rights **without** having to place any type of copyright notice on the work, or register the copyright. However, both use of a notice and registration provide important (sometimes critical) benefits and are highly **recommended**.

A typical **copyright notice** for most works includes the copyright symbol © (or the word Copyright or the abbreviation Copr.), the owner's name and the year of first publication; a typical example is: © 2004 John Smith. (Some audio or video recorded works substitute the phonorecord symbol ℗ in the notice.) Other wording, such as "All rights reserved", may be added. The notice should be incorporated into the work at the time the work is created. The form and location of a notice on or in connection with your particular work will depend on a number of factors, which your attorney can discuss with you.

**Registration** of the copyright with the Copyright Office must be completed before an infringer can be sued. Registration requires preparation and filing of a **registration application** and **deposit** of copies of the **best edition** of the work with the Copyright Office. If registration is completed within five years of first publication of the work, legal benefits are obtained which can aid in an infringement lawsuit. There may also be **deposit** of copies of published works apart from registration. Your attorney can advise you about the registration and deposit requirements for your work.

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