

Protecting Creative Expression Through Copyright Law

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When most people think of creative expression, they naturally envision the work of individual authors, artists, poets, singers, and musicians. In fact, these works only comprise the classic examples of copyrightable subject matter. Less obvious, however, is the multitude of everyday business components that lend themselves to copyright protection.

In today's competitive business environment, the potential valuation of a company lies not just in its physical assets but is based to a great extent on its ability to develop and capitalize upon a steady stream of new ideas and creativity. In this regard, important creative components of a business including sales brochures, advertising, solicitation letters and emails, instruction manuals, architectural and engineering drawings, pictures, photographs, paintings, graphical images, web-site designs, computer software, music, and sound recordings can all be protected under copyright law.

Copyright protection protects the original expression of an idea, whether literary, artistic, commercial or otherwise. It is used to protect original works of authorship that are fixed in a tangible medium of expression. Copyright protection generally lasts for 70 years after the author's death. Some examples of original works that may be protected with a copyright have been given above

Under current law, copyright protection attaches to a work whether or not the copyright owner registers the work with the U.S. Copyright Office. However, registration is required before an infringement lawsuit can be filed. Also, registering a copyright within three months of the work's first publication entitles the owner to statutory damages and attorney fees in an infringement action. Copyright registration is inexpensive and it is advisable to register any work believed to be of value.

The owner of a copyrighted work has the exclusive right to reproduce the work, prepare derivative works based upon the work, distribute copies of the work to the public, perform the work publicly, and display the work publicly. One significant disadvantage of copyright protection, however, is that "independent creation" is a valid defense to an

infringement action. In other words, a defendant can avoid liability as long as he or she can show that they did not copy from the earlier work.

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