

FARALLON LAW GROUP NEWSLETTER

(DECEMBER, 2011)

Copyright Protection

Copyright is one of several key intellectual property rights, along with trademarks, patents, and trade secrets. Because of the ease of achieving copyright protection, it is the most widely used. In the US, Copyright protection derives from the Copyright Act of 1976, as amended.

➤ **What is Copyright Protection?** The copyright law protects “original works of authorship fixed in a tangible form of expression.” This includes literary, dramatic, musical, and other artistic works, such as movies, songs, photographs, poetry, novels, software, and architecture. It also includes basic business materials such as business plans, advertisements and marketing materials, labels/packaging and web site content. There is no copyright protection for ideas, procedures, processes, slogans, principles, or discoveries or for names, titles, slogans, or short phrases. Sometimes, copyright protections overlap with these other intellectual rights particularly trademarks (e.g., logos and packaging) and patents (e.g., software).

➤ **How Do You Achieve Copyright Protection?** Copyright protection exists the moment an original work of authorship becomes fixed, i.e., as soon as it is written or recorded. No separate action is required for copyright protection- there is no application procedure or even a requirement of placing a copyright notice © on a work.

➤ **What is the Copyright Protection?** The Copyright Act of 1976 grants the following specified exclusive rights: to reproduce, prepare derivative works of, publicly display, publicly perform, and distribute copies. But there are certain critical exceptions, the most important of which is “fair use.” This complicated and continuously evolving doctrine allows copying in certain limited circumstances such as in socially important endeavors such as criticism, news reporting, teaching and research. Whether something constitutes a “fair use” is a factual determination which requires a detailed examination of a number of factors.

➤ **Why Should I Register a Copyright?** Registration is recommended for several reasons: the registration becomes public record and the owner receives a certificate of registration, in the event of infringement the owner may receive statutory damages and attorney's fees and the owner may receive certain evidentiary advantages in the event of infringement.

➤ **How Do You Register a Copyright?** To apply for copyright registration, you must complete an application form (available online at www.copyright.gov), pay the filing fee (\$35, if online) and submit a nonreturnable copy or copies of the work to be registered. It generally takes the Copyright Office approximately three months to process an application.

➤ **What is the Length of Copyright Protection?** For works created after January 1, 1978, the protection continues for the author's life, plus 70 years. However, for “works made for hire” (i.e., those made by an employee in the course of their employment or those specifically ordered or commissioned), the duration of copyright will be 95 or 120 years.

➤ **What International Copyright Protection Exists?** The US has copyright relations with most countries throughout the world through the Berne Convention. As a result, copyrights are reciprocally protected across international borders.

➤ **What is a Copyright Notice?** A copyright notice is an identifier placed on copies of the work that advises of copyright ownership. It generally consists of the copyright symbol, the name of the copyright owner, and the year of first publication, e.g., ©2012 John Doe. The use of a copyright notice is optional but it is necessary for copyright protection in certain countries and also helps prevent an “innocent infringer” defense in litigation.

Please feel free to contact Boris Lieberman or Mario Kashou at 415-255-2450 if you have questions about copyright protection.

This Newsletter is intended as a general guide to law issues and developments. It does not contain a general legal analysis or constitute a legal opinion of Farallon Law Group LLP or any member of the firm on the legal issues described. It is recommended that readers not rely on this general guide in structuring individual transactions but that professional advice be sought in connection with individual transactions.