

Copyrights

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Copyrights give the owner exclusive legal right to reproduce, publish, sell, or distribute an **original creative work**, or to make a derivative work (a work with changes to or adaptations of an original work). A work is original if it was **not copied** from some preexisting work, and can be original **without** being novel or unique. Examples of works include:

- Music
- Books, manuscripts
- Articles, newspapers, magazines
- Company material: ads, brochures, newsletters, jingles, etc.
- Movies, television broadcasts, videos, etc.
- Architectural blueprints
- Visual art such as paintings, photographs, sculptures, etc.
- Designs as expression of art: e.g., renderings for patents, sketches, manufacturing specs

As soon as a work is created it has copyright protection; registration with the U.S. Copyright Office is not necessary, but registration gives **benefits** to copyright owners:

- Registration establishes your ownership of your copyrighted material and creates a public record of the date of its existence.
- Registration is necessary before you can institute a lawsuit for copyright infringement.
- In a court action, you can only request to be awarded **statutory damages** if the copyrighted material is registered within 3 months of publication* or before the infringement occurs. Statutory damages can be up to \$150,000 per act of infringement plus attorney's fees. This is important because **actual damages** may be hard to prove, so the copyright statute allows the judge to determine damages based on what is "just" under the circumstances.

- In a court of law, copyright registration is prima facie evidence of validity of your copyright if it is registered within five years of publication.

*Publication is defined as the date the work is made available to the public.

How long does copyright protection last? For works created after January 1, 1978; protection endures for the life of the author plus an additional 70 years. For anonymous works, pseudonymous works, or works made for hire, copyright protection endures for 95 years from the year of first publication or 120 years from the year of creation, whichever expires first.

What can't be copyrighted?

- Ideas
- Factual information conveyed in a work
- Meaning of artistic or literary work
- Phrases
- Titles (e.g., of books, articles, movies, etc.)

Fair use is an exception to the copyright owner's right to exclusive use of their work. Fair use can be claimed when the work is used for:

- Teaching
- Criticism/comment
- Research
- News reporting
- Scholarship such as student works/writings/projects

You should only use as much of the work as necessary to make your point. There is no hard and fast rule on how much of the work crosses the line from fair use to infringement; this is determined on a case-by-case basis.



Kathleen Kuznicki is the head of the Intellectual Property Group at Lynch Weis, LLC. She works with both individuals and businesses to protect some of their most valuable assets, their intellectual property. Lynch Weis, LLC provides an array of services covering trademark, copyright and patent matters that are essential to business owners, inventors and other creative persons. Kathleen advises clients on the benefits of federal trademark registration and potential trademark infringement issues. She also advises on how copyright registration provides clients with greater means to enforce their rights to their materials. Kathleen works with inventors to initially file their patent applications as well as during the prosecution of those applications. She also advises on whether they have potential patent infringement concerns.