

## ***Copyright Basics***

Copyright protects the 'expression' of a work of authorship or art and is governed mainly by federal law, although state laws regarding intellectual property may aid in its enforcement. Copyright protection is limited in scope to the expression of a work, and does not extend to the underlying idea. It is one of the least expensive forms of intellectual property protection available.

There are three basic requirements for establishing copyright protection of a work: 1) It must be copyrightable subject matter; 2) fixed in a tangible medium; and 3) be an original work of authorship (or art). Each of these is discussed in more detail herein.

The length or term during which copyright protection applies, depends upon the circumstances. It generally gives authors or copyright owners protection for the life of the author or artist, and for 70 years more after the author or artist's death. Copyrightable materials created by an employee for a company or under a signed agreement qualify for protection for 95 years from the date the works were published, or if not published, for 120 years from the date the works were created.

Copyright protection arises automatically upon creation of the work! There is no procedure or requirement to file or apply for the basic protection to attach to the work. However, in order to enforce your rights effectively a federal copyright registration is required. In addition, there are significant benefits obtained by registering the copyright with the Copyright Office, especially if done within three (3) months of the first date of publication and/or distribution. There is presently a \$30 government filing fee, accompanied by the proper forms and specimens, which makes registration a sound investment for most works having any potential value.

It is good practice to include a copyright notice on all works that are copyrightable, such as "©" or "Copyright" and the year and name of the copyright owner; such as "Copyright 2004, Maine Cernota & Rardin, all rights reserved". This should be done as a matter of policy by companies or individuals generating copyrightable material on a regular basis. Such notice prevents infringers or copiers from claiming innocent infringement and may enhance damages. Also, a system for maintaining a file copy of all such materials as they are created, along with a date of origin and authorship data, will be of help if a later copyright enforcement issue arises.

This general information is provided as a courtesy to the public by the law firm of Maine Cernota & Rardin, is not intended to be relied on as a statement of law or fact, is subject to change at any time, does not constitute legal advice, is not a solicitation for legal services, and is not intended to interfere with any existing business or legal relationship. Please communicate any errors or omissions in the information to Administrator, [info@mcr-ip.com](mailto:info@mcr-ip.com) or call (603) 886-6100.

Copyright © 2012 by Vernon C. Maine, PLLC  
[www.mcr-ip.com](http://www.mcr-ip.com)

**Maine Cernota & Rardin, Registered Patent Attorneys**

547 Amherst St., 3<sup>rd</sup> Floor, Nashua, NH 03063  
603-886-6100 – [info@mcr-ip.com](mailto:info@mcr-ip.com)

### ***COPYRIGHTABLE SUBJECT MATTER***

Copyrightable subject matter includes, for example, books, periodicals, phonorecords, film, tapes, software, musical works (including accompanying words), dramatic works (including accompanying music), pantomimes, choreographic works, pictorial, graphic, and sculptural works, motion pictures and other audio-visual works, sound recordings, and architectural works to name a few.

Not all works of authorship or art are entitled to federal copyright protection. Certain types of subject matter not copyrightable on the federal level include works that have not been fixed in a tangible form of expression (e.g., improvisational speech that has not been written down or recorded).

To be entitled to copyright protection, the work must also rise to a recognizable level of originality, as is discussed below. Titles, names, short phrases, and slogans are generally not copyrightable, including familiar symbols or designs that may be governed and better protected by trademark laws according to their usage. Simple variations of typographic ornamentation, lettering, or coloring or listings of ingredients or contents are generally not entitled to copyright protection.

Also, since copyright protects the expression but not the underlying idea; ideas, procedures, methods, systems, processes, concepts, discoveries, or devices are not are not protected by copyright and would more likely fall under the realm of patent law. However – there may be certain state laws that do provide forms of copyright protection not covered under the federal laws

### ***ORIGINAL WORK OF AUTHORSHIP***

For a work to be considered “original,” it cannot be substantially copied from another work. Rather, the work must contain at least a 'modicum of creativity'. The requirement that the work be original does not require novelty, as is required for patent protection. On the other hand, common information that does not contain even a modicum of creativity cannot be protected by copyright law. Some exceptions exist, as well as alternative forms of protection. When it matters, copyright counsel should be consulted.

### ***FIXED IN A TANGIBLE MEDIUM***

The “fixed in a tangible medium” requirement for copyright protection to apply merely requires that the work be placed or saved in some form that can be perceived or reproduced directly (e.g., on paper) or indirectly (e.g., a computer hard drive or memory device).

The owner of a copyright has the exclusive right to reproduce the copyrighted work, to prepare derivative works based upon the copyrighted work, and to distribute copies to the public by sale or other transfer of ownership, or by rental, lease, or lending. In the case of literary, musical, dramatic, choreographic works, pantomimes, and pictures and other audiovisual works, the owner of a copyright also has the exclusive right to perform the copyrighted work publicly. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, the owner of a copyright also has the exclusive right to display the copyrighted work publicly, and in the case of sound recordings, to perform the work publicly by means of a digital audio transmission.

Some examples may be helpful.

Example #1: Suppose Hendrix writes a poem on a parchment and sells the parchment to Dylan. Dylan may now own the parchment with the poem - but Hendrix still owns the copyright on the poem. If Dylan puts together a collection of poems, including Hendrix’s poem, and sells the collection, Dylan may be infringing Hendrix’s rights under copyright law. This is true even though Dylan can register the collection as his own copyrighted work. The arrangement and selection of the individual poems within the collection may be copyrightable.

Example #2: Bono is in a rock band and writes the lyrics to a song, while another band member Larry, writes the score. The band then plays and records the song. There are three separate copyrights - the lyrics, the score, and the recorded song.

Example #3: If Clem takes public census information pertaining to Boston and assembles a fact booklet about Boston, the selection and arrangement of the facts is copyrightable. The facts themselves are not, (although there is some Legislation pending in this area) and someone else is free to take those same facts and assemble them differently.

Example #4: As a software guru, Virgil codes a novel algorithm for processing data on the Internet. The literal code and the expression of the work qualify for copyright protection. The functionality of the software may be protectable by patent law if it meets the patent requirements, but would not get protection from copyright.

Additional information about copyrights, including all necessary forms and instructions, can be found online at [U.S. Copyright Office](#). Although selecting the correct forms and completing the questions looks simple, there are some forms and some questions, the answers to which are not intuitive. It would be good practice to have a copyright attorney review your application and related circumstances prior to filing, if the work is potentially valuable. To request publications including application forms and circulars (no charge), write to:

**Library of Congress  
Copyright Office**

Publications Section, LM-455  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000

Copyright protection for a work created or first published in the United States extends by international treaty to many other countries whether or not you register in the United States, but again, a registration is necessary as a practical matter in order to enforce copyright protection. Consult a copyright attorney early with respect to any important or valuable works of authorship or art.

---

---