



Understanding Copyright

Presented by
Stephen Summer
Attorney at Law
www.summer-law.com

3930 Bee Cave Rd. Suite G
Austin, TX 78746
327-3399

©2012 Stephen Owen Summer PC

Intellectual Property

- ▶ What is Real Property
- ▶ What is Intellectual Property?
- ▶ 3 types
 - Trademark
 - Patent
 - Copyright



Trademarks

- A **trademark** is a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs, that identifies and distinguishes the source of the goods of one party from those of others.
- A **service mark** is the same as a trademark, except that it identifies and distinguishes the source of a service rather than a product.





Patent



- A patent for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office.
- Generally, the term of a new patent is 20 years from the date on which the application for the patent was filed in the United States.
- U.S. patent grants are effective only within the United States, U.S. territories, and U.S. possessions.
- The right conferred by the patent grant is, “the right to exclude others from making, using, offering for sale, or selling” the invention in the United States.
- What is granted is not the right to make, use, offer for sale, sell or import, but the right to exclude others from making, using, offering for sale, selling or importing the invention.

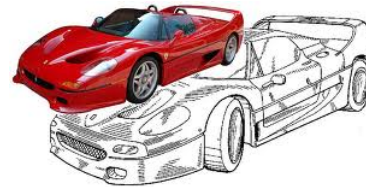
Patent (cont)

There are three types of patents:

1. Utility patents may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof;



2. Design patents may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture; and



3. Plant patents may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.



Copyright

- ▶ Copyright protects **original works** of **authorship** that are **fixed** in a **tangible medium of expression**.
- ▶ Copyright is a form of protection provided to the **authors** of “**original works** of authorship” including literary, dramatic, musical, artistic, and certain other intellectual works, both **published** and **unpublished**.
- ▶ Copyright allows authors, musicians, artists, etc. to make money off of their labor. It prevents others from taking their work for free. It also prevents people from altering the work without permission.



Copyright (cont)

- ▶ The copyright protects the *form of expression* rather than the subject matter of the writing.
- ▶ For example, a description of a machine could be copyrighted, but this would only prevent others from copying the description; it would not prevent others from writing a description of their own or from making and using the machine.
- ▶ Copyrights are governed by the 1976 Copyright Act and are registered by the Copyright Office of the Library of Congress.



LIBRARY OF
CONGRESS

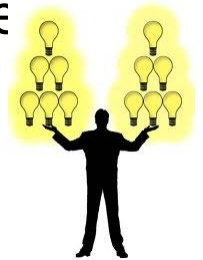
What works can be protected?

- ▶ literary works
- ▶ musical works, including any accompanying words
- ▶ dramatic works, including any accompanying music
- ▶ pantomimes and choreographic works
- ▶ pictorial, graphic, and sculptural works
- ▶ motion pictures and other audiovisual works
- ▶ sound recordings
- ▶ architectural works



What is not copyrightable

- ▶ Works that have not been fixed in a tangible form of expression (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded)
- ▶ Titles, names, short phrases, and slogans;
- ▶ Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration; and
- ▶ Works consisting entirely of information that is common property and containing no original authorship (for example: standard calendars, horizontal rulers, and public documents or other common works)



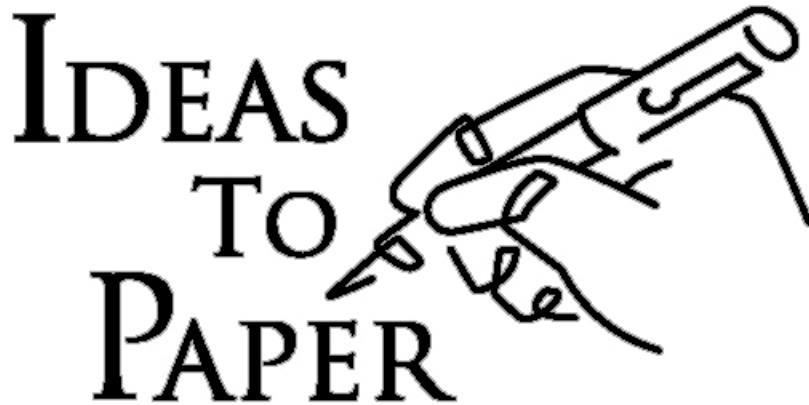
OUTLINE

- ▶ When does copyright attach
- ▶ How long does protection last
- ▶ Rights of the copyright holder
- ▶ Who is the copyright owner
- ▶ Copyright notice
- ▶ Publication
- ▶ Registration
- ▶ Infringement
- ▶ How to register your copyright



When Does Copyright Attach?

- ▶ The copyright is in force when the work is “fixed” in a tangible medium which includes saving to disk or writing it on paper.
- ▶ No publication or registration is required.



How long does protection last? Copyright Term

Life Plus 70: In the U.S., copyright subsists from creation and endures the full life of the author plus 70 years after the author's death.

95 Years from Publication: If the author is not a natural person, then copyright endures 95 years from publication or 120 years from creation, whichever expires first.



Rights of the Copyright Holder

- ▶ **Exclusive** right to:
 - Reproduce the copyrighted work,
 - Prepare derivative works,
 - Distribute copies or phonorecords of the work,
 - Perform the copyrighted work publicly,
 - Display the copyrighted work publicly,
 - Perform the work publicly by means of digital audio transmission (sound recordings only)



Who is the Owner?

- ▶ Copyright initially belongs to the individual authors. The owner of the copyright is called the **claimant** – sometimes it is not the **author!**
- ▶ The owner is usually the person who created the work (author), unless that person has transferred the copyright to someone else (claimant).
- ▶ When can this happen?
 - Book publisher
 - Music publisher
 - Work for hire



When is the author not the Claimant?

“Work for Hire”

- ▶ Copyright that is created by a person who is under the employ of another
- ▶ In this situation, the copyright claimant is the employer
- ▶ Employees usually sign their rights away under employment agreement
- ▶ If there is any doubt about ownership at the time of creation – get something in writing – musicians!!!!



Transfer of Copyright

“Any or all of the copyright owner’s exclusive rights...may be transferred, but the transfer of *exclusive* rights is not valid unless that transfer is in writing.... Transfer of a right on a *nonexclusive* basis does not require a written agreement.”

-- *U.S. Copyright Office, Circular 1, page 6*



Copyright Notice

- ▶ **No notice is required.**
- ▶ Notice may benefit the owner against a supposed “innocent infringer.”
 - In the event that a work is infringed, if a proper notice of copyright appears on the published copy or copies to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant’s interposition of a defense based on innocent infringement in mitigation of actual or statutory damages
- ▶ Forms of notice: ©, the word “Copyright,” or the abbreviation “Copr.,” year of publication, and name of the copyright owner.

Copyright © 1996 - 2010

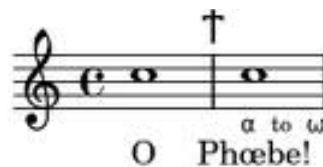
www.*Ingrid
Balme*.com



How to provide notice

The notice for visually perceptible copies should contain all the following three elements:

- ▶ The symbol © (the letter C in a circle), or the word “Copyright,” or the abbreviation “Copr.”; and
- ▶ The year of first publication of the work.
- ▶ The name of the owner of copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.
- ▶ Example: © *2008 John Doe*



Copyright 2008--2011 ©

The “other” notice

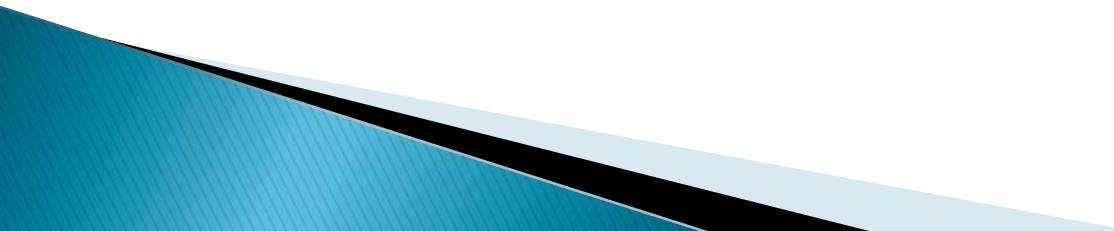
- ▶ **The “C in a circle” notice is used only on “visually perceptible copies.”**
- ▶ **Certain kinds of works—for example, musical, dramatic, and literary works—may be fixed not in “copies” but by means of sound in an audio recording.**
- ▶ **Since audio recordings such as audio tapes and phonograph disks are “phonorecords” and not “copies.” The “C in a circle” notice is not used to indicate protection of the audio recording.**

Form of Notice for Phonorecords of Sound Recordings

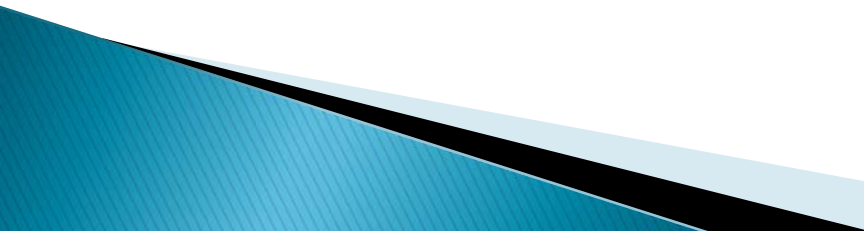
The notice for phonorecords embodying a sound recording should contain all the following three elements:

- ▶ The symbol (P) (the letter P in a circle); and
 - ▶ The year of first publication of the sound recording; and
 - ▶ The name of the owner of copyright in the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.
- ▶ Example: (P) 2008 A.B.C. Records Inc.

Publication

- ▶ “Publication” is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending.
 - ▶ A public performance or display of a work does not of itself constitute publication.
- 

Why is Publication Important

- ▶ Works that are published in the United States are subject to mandatory deposit with the Library of Congress.
 - ▶ The year of publication may determine the duration of copyright protection for anonymous and pseudonymous works (when the author's identity is not revealed in the records of the Copyright Office) and for works made for hire.
 - ▶ Deposit requirements for registration of published works differ from those for registration of unpublished works.
 - ▶ When a work is published, it may bear a notice of copyright to identify the year of publication and the name of the copyright owner and to inform the public that the work is protected by copyright.
- 

Notice of Unpublished Works

- ▶ The author or copyright owner may wish to place a copyright notice on any unpublished copies or phonorecords that leave his or her control.
- ▶ Example: Unpublished work © *2008 Jane Doe*



Do You Have to Register Your Copyrights to Have Protection?

- ▶ NO – Why?
- ▶ Current law says copyright created at fixation in tangible form
- ▶ BUT there are serious advantages and necessities to registration



What are the Advantages to Registration?

- As a U.S. copyright owner, you must register in order to be able to bring suit in federal court for infringement.
- Pre-requisite for obtaining statutory damages and attorney's fees.
- Easier to enforce your copyrights in foreign courts.
- Puts others on notice.
- Easier to license work, collect royalties, and enforce your rights outside of court.



Registration (Cont)

- ▶ **If registration is made within three months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner.**
- ▶ Registration allows the owner of the copyright to record the registration with the U. S. Customs Service for protection against the importation of infringing copies
- ▶ **Registration may be made at any time within the life of the copyright.** Unlike the law before 1978, when a work has been registered in unpublished form, it is not necessary to make another registration when the work becomes published, although the copyright owner may register the published edition, if desired.

What is Infringement

- ▶ It is someone who is not the owner (claimant) using or interfering with one or more of the exclusive rights of the owner.
- ▶ Proving Infringement:
 - Direct Evidence of Infringement; or
 - Circumstantial evidence of infringement:
 - Access to plaintiff's copyrighted work
 - Unlawful copying of the work as evidenced by
 - Substantial similarity of original and infringing work

Remedies for Infringement

- ▶ Injunctive relief
- ▶ Impoundment and destruction of goods
- ▶ Compensatory damages and profits
- ▶ Costs and attorney fees
- ▶ Statutory damages
 - \$750 to \$30,000
 - Not to exceed \$150,000 if willful
 - Innocent infringement can lower to \$200

Defenses to Infringement

- ▶ Fair Use (Remember it is a Defense after accused)
 - Purpose and character of use
 - Nature of the copyrighted work
 - Amount of work used
 - Effect of use on the market for the work
- ▶ Innocent infringement IS NOT A DEFENSE
- ▶ Parody
- ▶ Invalidity of copyright
- ▶ Unclean hands
- ▶ 3 year statute of limitations

AVOIDING COPYRIGHT CLAIMS WHEN USING 3RD PARTY CONTENT

- ▶ Ask permission from the claimant
- ▶ Go to www.copyright.gov to find owner



How to Register your Copyright?

A copyright owner must:

- File an application;
- Pay a nominal filing fee (\$35); and
- Deposit copies of the work at the Copyright Office. Some of the works may be added to the collections of the Library of Congress.

Which Registration to use

- ▶ Form TX (literary works);
- ▶ Form VA (visual arts works);
- ▶ Form PA (performing arts works, including motion pictures);
- ▶ Form SR (sound recordings); and
- ▶ Fill-in Form CO can be used for the categories of works applicable to Forms TX, VA, PA, SR, and SE.



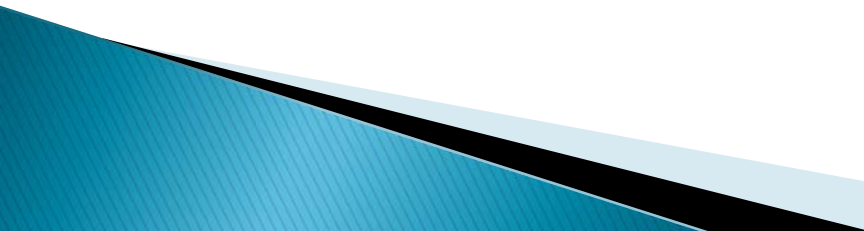
Effective Date of Registration

- ▶ A copyright registration is effective on the date the Copyright Office receives all the required elements in acceptable form.

Types of Registration – Option 1

- ▶ Online registration through the electronic Copyright Office (eCO) is the preferred way to register basic claims for literary works; visual arts works; performing arts works, including motion pictures; sound recordings; and single serials.
- ▶ Advantages of online filing include
 - a lower filing fee
 - fastest processing time
 - online status tracking
- ▶ the ability to upload certain categories of deposits directly into eCO as electronic files

Option 2 – Fill in Form CO

- ▶ The next best option for registering basic claims is the new fill-in Form CO. Using 2-d barcode scanning technology, the Office can process these forms much faster and more efficiently than paper forms completed annually.
 - ▶ Simply complete Form CO on your personal computer, print it out, and mail it along with a check or money order and your deposit.
- 

Option 3 – using paper forms

- ▶ Paper versions of Form TX (literary works); Form VA (visual arts works); Form PA (performing arts works, including motion pictures); Form SR (sound recordings); and Form SE (single serials) are still available.
- ▶ They are not available on the Copyright Office website; however, staff will send them to you by postal mail upon request.
- ▶ Remember that online registration through eCO and fill-in Form CO (see above) can be used for the categories of works applicable to Forms TX, VA, PA, SR, and SE.

Copyright.gov

- ▶ Check out the www.copyright.gov website
- ▶ Look at researching copyright owners
- ▶ Look at helpful tips on site
- ▶ Begin eCO filing
- ▶ Review CO filing

