



Intellectual Property

Part 2, Copyright

THIS ARTICLE CONTINUES THE DISCUSSION we started in the Spring 2005 issue of *Protocol* concerning the four main types of Intellectual Property a company or individual may own – perhaps without even realizing it. Those four categories are trademarks, copyright, patents and trade secrets. Last time we talked about trademarks and now we'll move on to copyright.

I should perhaps make it clear that I am not a lawyer so nothing I talk about in these articles is legal advice. The articles are based on information I've picked up over the years and found useful based on my personal point of view as a product designer and developer in our industry. Because of that my comments are undoubtedly somewhat selective and subjective. In no way should you take what I say as anything more than useful (I hope) background information to assist further research. As with any legal matters if you have a real problem or concern always talk to a real attorney!

In common with other forms of intellectual property (IP) copyright is similar to personal or real property in that it can be bought or sold, licensed, and exploited.

As the name suggests, in its most basic definition, copyright offers protection against the direct copying of the expression of an idea. That expression has to be in a tangible and identifiable medium – you can't copyright an idea without having that "tangible expression" on paper, computer disk or other medium.

The important point to understand here (and it's perhaps the key point of this whole article) is that it is the tangible expression of the idea that is able to enjoy copyright protection – not the idea itself. Many people could have the same thought or idea simultaneously and could each copyright their own expression of that identical idea. Sensibly the law realizes you could never adjudicate on people's thoughts so you have to write them down first. Copyright differs from patents and other forms of IP in that the work need not be novel or useful – all that matters is that it is original.

To make this distinction between copyright and other forms of IP as clear as possible the current US copyright statute states, "In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work."

Forgive me if I'm belaboring this point – but it is the single most misunderstood aspect of copyright. Let me give an example: let's say you write an article describing your revolutionary process used to manufacture a new fog machine. The article has copyright protection, but the ideas expressed in it – i.e., the new manufacturing process

itself – have no protection at all from copyright law. You cannot rely upon copyright to give you that kind of protection, all you are preventing in this case is someone else using the exact same words to describe the process.

You also can't copyright facts or history – for example telephone directories or other works which just catalog or list known facts without any other creativity cannot be copyrighted. Selective or creative editorial surrounding those facts is copyrightable, but not the facts themselves. What this means is that you may be free to use the factual data contained in a copyrighted work without specific permission. However you cannot copy any creative or original method that may have been used to present those facts.

So, what do you have to do to get copyright protection on something you've written or otherwise "tangibly expressed" on paper or on a computer disk? The easy and short answer is: nothing. The great thing about copyright is that basic protection is completely automatic and, even better, absolutely free! This wasn't always the case, prior to 1989 in the US you had to put the © symbol or the word copyright on an article to establish your rights. This removal of the need for registration in 1989 brought the US into line with Europe where there was no such requirement and opened the door to the international copyright agreements now in place.

That's the good news – the bad news is that you cannot actually sue anyone for infringement without first registering the copyright. However there is good news again in that registration only costs \$30 and you can do it at any time in the life of the copyright – even up to three months after someone infringes as you are standing on the courthouse steps.

There are advantages to registering earlier than that. If you have registered the copyright before anyone infringes, you are entitled to claim statutory damages and attorney's fees if you win the case. Without prior registration you would only get actual damages such as lost profits.

Another advantage to registration is that the US Customs Service recognizes a copyright registration as protection against the importing of infringing copies from overseas. This can help you obtain injunctions or seizures of illegal copied imports.

You probably wouldn't bother getting copyright registration on something like a sales brochure or a magazine article like this one. However if you have created something with high intrinsic value then you should definitely consider it. It could be \$30 well spent. Don't think this only applies to literary works, scripts, dramatic works and music recordings. You should seriously consider registering other

forms of valuable tangible expression such as: computer programs, video clips (very relevant as we move into digital media presentation on stage), and gobo patterns. All of them have value and all are copyrightable.

By the way, even though I said above that you no longer need to put the © symbol on something to obtain statutory protection, it's still a good idea to do so. By using the © symbol along with the word "copyright," the date, and the name of the copyright owner you are providing reasonable notice of your copyright ownership and precluding any infringer claiming that they did so innocently. You don't have to register the copyright to do this, so always put a copyright notice on any original creative piece, registered or not.

Copyright protection lasts a long time; it's a real bargain. (You can thank Sonny Bono for some of that – he managed to get 20 years added to most copyright terms in 1998.) Under current US law, for works created after January 1st 1978, you have copyright protection until 70 years after the death of the author. Or, if the work is commissioned, anonymous or essentially anonymous (many items owned by companies such as user manuals come under this), then the copyright lasts until 95 years after publication or 120 years after creation – whichever comes first.

Because of the changes mentioned above that were made to US Copyright law in 1989, US copyright holders are now also able to claim reciprocal copyright arrangements in many other countries. These rights are automatic so it is not necessary to apply for copyright protection in individual countries. The protection you get will be lim-

ited to whatever is covered by local law for locally created works, so it will vary from country to country.

To turn this article around the other way, what do you do if you want to use someone else's copyrighted work? The simple and really the only answer is, ask them. This is getting more and more relevant with the increasing use of video clips, computer based images and media servers – you should be very careful that you have permission from the copyright owners for anything you use on your shows. Most media servers come with pre-stocked material which has the appropriate copyright clearances but that may well not be the case for new clips and footage. It is your responsibility to check.

Finally remember that copyright only protects against direct copying, it doesn't protect against someone else independently writing or creating the same or a similar work unless it can be demonstrated that they copied significant portions of your work. With all that in mind though a simple © symbol can go a long way.

Next time – patents.

PS – This article is my copyright, but I use a lot of facts in it – you are free to use any of those facts in any way you see fit; in fact I encourage you to do so! ■

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Mike Wood is president of Mike Wood Consulting LLC which provides consulting support to companies within the entertainment industry on technology strategy, R&D, standards and Intellectual Property. A 25-year veteran of the entertainment technology industry, Mike is currently the Immediate Past President of ESTA, where he served as President for six years from 1999-2004.