

Exercising Copyright Caution: Research, Registration and Designation

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[Excerpt from *Entrepreneurs' Guide to Patents, Trademarks, Copyrights Licensing and Trade Secrets* \(Penuguin/Putnam Press 2004\)](#)

It's a silly legal myth that mailing a copy of your work to yourself gives you copyright protection. Mailing a copy to yourself (even if it's certified) doesn't do much, except possibly help to establish the date the work was created. But then again, everyone knows envelopes are easily steamed open. Fortunately, the registration procedures that can preserve your rights aren't a whole lot more complex. Just remember to register each of the creative elements of your work separately -- visual, written and audio. In fact, you can even register your *individual* contribution to a creative effort that involves collaboration of different artists and writers.

In This Chapter You Find Out:

- *Whether it's worthwhile to register your copyright*
- *How to research who owns copyrights to other work*
- *How and where to get copyright forms*
- *How and when to display the © symbol*

Flipping from channel to channel on your television the last few Christmas seasons, you may have noticed the absence of It's A Wonderful Life. The holiday mainstay isn't appearing on just about every channel; you can actually watch something else if you really want to.

In fact, you may not be able to find It's a Wonderful Life! It's now being run just once a year on NBC. You can't even get extra showings on premium cable stations.

This is because a company named Republic (formerly NTA) is asserting that it still owns the rights to the film's music. Although the film itself passed into the public domain after the initial 28-year term, the rights to the music were copyrighted separately and renewed. Republic sold the exclusive rights to air the music contained in the film to NBC in 1997 after informing all the other networks, in a Scrooge like fashion, that they were in violation of its copyrights.

Republic's claims of a separate registration and renewal are true, but may not be definitive. The musician, Dimitri Tomikin, signed a contract to Capra/Liberty, the film's producers, assigning rights to the music. It may be that those rights belong to Capra/Liberty and their successors (the public). But then, who is going to pay an attorney to argue for free public access? One of the Bailey kids is reportedly angry that Republic went after him for using still shots in his "It's a Wonderful Life" calendar, and has publicly vowed to wage a legal challenge to Republic, but so far no holiday litigation sequel is airing.¹

Registration isn't mandatory; it's more like a sort of insurance.

While not every work justifies taking the time and money to register, works in which you've invested substantially or that offer the promise of significant financial returns warrant added protection. This chapter takes a look at the advantages of a registration certificate, and of using the © symbol to let the world know you have one.

¹ This information was reported in an article by David B. Hayes, in a Newsgroup called alt.movies.silent (October 22, 1997). The URL for this online article is home.earthlink.net/~david_phayes/Articles/c02.html.

The Advantages of Registering, Sooner or Later

There's no rush to register. In fact, you can register anytime within the life of the copyright. However, your claims can be more difficult to document and some rights and protections can be lost if you don't file your registration within specified time frames.

Registration Establishes a Public Record Your Copyright Claim

One advantage to registration is that it beats the self-addressed envelope for establishing the date that you created your work. No one can accuse you of steaming anything open. The date you created a work is significant, because copyright protection is automatic once your work is memorialized in a fixed, tangible form.

Registration is Required to File a Lawsuit for Infringement

Registration provides the keys to the courthouse. Before you can file a lawsuit for copyright infringement in a U.S. court, for a work of U.S. origin, you have to register it. You can do this on the eve of filing your lawsuit, since you can register any time within the legal copyright term. (Copyright terms are discussed in *Chapter 7, The Core Concepts of Copyright*.) However, as the following sections of this Chapter explains, your rights may be enhanced by registering more promptly.

Registration Within Five Years Establishes a Presumption of Validity

If you register within 5 years of publication, your registration will establish certain facts in court you would otherwise have to go to the expense of proving. The court will presume validity of your copyright and of the facts stated in the registration certificate.

Registration Within 3 Months is Required For Statutory Damages and Attorney's Fees

If you register within 3 months after publication, you can collect *statutory* damages as well attorney's fees if you prevail in an infringement action. Otherwise, you're limited to recovering your *actual* damages.

Actual damages are losses you must prove you've incurred, such as lost profits. If you qualify for statutory damages, a court can award them without specific proof you've incurred them. They range from \$750 to \$150,000 per infringing act, depending upon whether the infringing act is deemed "willful."² (See Chapter 7, *The Core Concepts of Copyright*.)

Business Tip: Registering your work may make it easier to find an attorney willing to handle your case on a contingency basis, rather than requiring you to pay an expensive hourly rate up front. Registration permits statutory damages of up to \$150,000 if a willful infringement is found, and also enables you to recover attorneys' fees and costs from an infringer.

Registration Protects Against Importation of Infringing Works

Registration provides a powerful weapon against foreign knock-offs.³ You can record your registration with the U. S. Customs Service for protection against the importation of infringing copies.

² 17 U.S.C. Sec. 504(c).

³ 17 U.S.C. Sec. 601(a).

To get this protection, you must also register with the Intellectual Property Rights Branch (IPR Branch) of the Customs Service, and present documentation showing you've already registered with the U.S. Copyright Office.

Approval of an IRPB application usually takes 1-2 weeks, and you're promptly notified by mail of the acceptance or rejection of your application. Protection is effective from the date your IRPB application is approved, and remains in force as long as your copyright registration is in force.

Registration Satisfies the Mandatory Deposit Requirement

Registration kills two birds with one formality. While registration is now optional, there's a mandatory requirement under U.S. law that two copies of all published works be deposited with the library of Congress within three months of publication.

Failure to meet the deposit requirement isn't fatal to your copyright, but it does subject you to some fines and penalties. The statute contemplates voluntary compliance, but the Library of Congress may issue a demand for deposit of copies of published materials at any time. Failure to comply with this demand, within three months, subjects you to a fine of not more than \$250 for each work plus the retail price of the copies. If your refusal to comply is willful or repeated, you can be liable for an added fine of \$2,500.

To satisfy requirements for *both* registration and deposit, send the following in one package to the Register of Copyrights:

- Your two mandatory deposit copies.
- A completed application for registration.
- A \$30 nonrefundable filing fee payable to the Register of Copyrights.

If you opt not to register, but want to satisfy the mandatory deposit requirement (which may help establish the date of your work), you can send your deposit copies to:

Library of Congress

Register of Copyrights

Attn: 407 Deposits

101 Independence Avenue, S.E.

Washington, D.C. 20559-6000

Business Tip: Looking for a work that has long been out of print, or have a nagging feeling something may be covered by copyright even though it hasn't been registered? Try the Library of Congress depositories. The Library of Congress doesn't maintain copies of all works deposited, but it is the undisputed largest collection of all types of works subject to copyright in the world.

Filling Out the Forms

The sole purpose of copyright registration is *documenting* who created what and when they did so. It's not surprising that the process revolves around filling out forms and getting copies of your work to the right place.

How and Where to Get the Forms

Copyright forms are free and easy to get, along with informational circulars explaining how to handle issues that may come up. You obtain free forms by doing any of the following:

- Call the U.S. Copyright Office Hotline at (202) 707-9100 and leave a message on their voice mail machine.
- Log onto the U.S. Copyright Office Web site at <http://lcweb.loc.gov/copyright/>
- If you don't know the name of a particular publication, try calling the Copyright Office's prerecorded information line at (202) 707-3000.

Copyrighting Specific Types of Works: Which Forms to Use

Copyright registration forms are fairly simple to fill out. The tricky part is making sure you've completed the right one. The Copyright Office requires different forms for different types of works, and the materials that you have to send in with the forms varies. Table 11-1 summarizes the required forms and materials for various types of creative works.

Compilations, Collaborations and Multiple Registrations

If it weren't for the fact that every creative aspect of a work is entitled to its own copyright protection, you could still find *It's a Wonderful Life* airing a dozen times a day the week before Christmas.

Music, lyrics dialogue, and artistic renditions may all go into a production. Each contribution can be registered separately. Suppose you and a friend write a song. You write the lyrics, your friend writes the melody. Each of you is entitled to separate copyrights for your contributions to this collaborative effort. Similarly, suppose you and your friend each write chapters of a novel. Each of you can copyright the parts you wrote.

Table 11-1: Copyright Requirements for Particular Types of Works

Type of Work	Requirements for Particular Work	Form to File	Materials to Include
Literary Works, Computer Programs	Literary works may be published or unpublished and include non-dramatic textual works with or without illustrations. Computer programs and databases also are considered literary works.	Form TX or Short Form TX	Copies of all material to be registered; \$30.00 filing fee

Visual Arts	Visual arts are pictorial, graphic, or sculptural works, including 2-dimensional and 3-dimensional works of fine, graphic, and applied art. "Useful articles," such as furniture may have copyrightable artistic elements. Some architectural works qualify as visual arts works.	Form VA	Non-returnable copies of the material to be registered; \$30.00 filing fee
Sound Recordings	Sound recordings are "works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work." Common examples include recordings of music, drama, or lectures.	Form SR	Non-returnable copies of the material to be registered; \$30.00 filing fee
Performing Arts	<p>Performing arts works are intended to be "performed" directly before an audience or indirectly "by means of any device or process." Included are: (1) musical works, including any accompanying words; (2) dramatic works, such as scripts, including any accompanying music; (3) pantomimes and choreographic works; and (4) motion pictures and other audiovisual works.</p> <p>Note: Registering performing arts registration is not the same as registering a sound recording.</p>	Form PA or Short Form PA	Materials to be included depend upon the work; \$30.00 filing fee must be included
Music (Compositions)	Sound recordings present special issues. See discussion in this Chapter.	To register a sound recording, you should use a Form SR. To register a composition, you need a Form PA. A literary work (such as song lyrics) may be registered using a Form TX.	Non-returnable copies of the material to be registered; \$30.00 filing fee
Serials and Periodicals	Serial works are issued or intended to be issued in successive parts bearing numerical or chronological designations and are intended to be continued indefinitely.	For single issues, use Form SE or Short Form SE (choose which form to use). For a group of issues that meet certain conditions , use Form SE/Group . For a	Non-returnable copies of the material to be registered; \$30.00 filing fee

		group of daily newspapers or newsletters that meet certain conditions , use Form G/DN .	
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Special Issues for Copyrighting Music

Copyright protection for music is automatic, but the issues are far from simple. A song gets copyright protection as soon as it's created and "embodied" in some form.

But the usual form of embodiment, a basic recording of your song, actually includes two copyrights. One copyright consists of the *sound recording of your musical composition*, and the other copyright exists for the musical composition.

A sound recording consists of the *actual sounds* embodied on your audiotape, whether these include as singing, musical instruments, computer generated sounds or exotic animal noises. A musical composition can be purely instrumental or any imaginable combination of lyrics and music. It's also possible to copyright lyrics separately as a literary work.

Using the Copyright Notice

The tiny little copyright symbol puts the world on notice of your legal rights. Although the symbol is optional, it can be worth your while to display it prominently on all of your copyrighted works. Your failure to do so may give rise

to a claim of “innocent infringement.” This means that an infringer claims he was unaware of your copyright protection. A successful innocent infringement can result in a reduction of the monetary damages to which you would otherwise receive.

Lawyer’s Note: While displaying the copyright notice not required for works published since 1989, it thwarts a defense of innocent infringement.

A proper copyright notice, for all works other than sound recordings, consists of three elements:

1. C-in-a Circle © (or the word "Copyright" or the abbreviation "Copyr.")
2. The year of first publication
3. The name of the copyright owner

For sound recordings, the copyright symbol is actually the letter "P" (for "phonorecord") in a circle Ⓒ, followed by the year of publication and the copyright owner's name. The Copyright Act does not permit you to spell out "phonorecord." You have to use the P-in-a-Circle.

Immediately following the copyright notice, you should also add the words "All Rights Reserved." This provides special protections in foreign jurisdictions.

Lawyer’s Note: The copyright notice should be written in a place that will provide reasonable notice to prospective infringers, such as the cover of your CD or the packaging of your product. Use the copyright notice on all copies of your work, even demos and samples you give to friends. Even a single unmarked copy can be reproduced and distributed, and the infringer can invoke a defense of innocent infringement.

Researching Existing Copyrights

No one relishes the thought of being sued for infringement. But proper research reduces the risk of it happening. There are three common ways to investigate whether a work is under copyright protection and the scope of the copyright holder's claim.

Look for the Copyright Notice

Some times the answer to a problem is in plain view and doesn't have to be unearthed by painstaking research. Examine a copy of the work the copyright notice, place and date of publication, author and publisher. For example, if the work is a sound recording, examine the disk or tape cartridge. Flip through the pages of a book or manuscript, and make sure you have a complete copy of all the pages that may contain the copyright notice.

Search the Copyright Office Archives

The location of Copyright Office records varies, depending on how far back in time you need to go. The Copyright Office published the *Catalog of Copyright Entries (CCE)* in printed format from 1891 through 1978. From 1979 through 1982 the CCE was issued in microfiche format.

You can research registrations subsequent to 1982 on the Internet, by accessing the free data base located at www.copyright.gov www.copyright.gov. Simply go to the home page, and click the link "Search Copyright Records." You

can search the database using the title of the work, the name of the assignee or assignor or a document number (if you have one).

Have the Copyright Office Search For You

Here's a rare example of your government working for you, albeit for a fee. Upon request, the Copyright Office staff will search its own records, charging \$75 for each hour or fraction of an hour consumed. Based on the information you furnish, the Office will provide an estimate of the total search fee. If you decide to go ahead with the search, send the estimated amount with your request. The Office will do its search and send you a written report or, if you request, tell you the results by phone.

Lawyer's Note: Certified searches are sometimes required to meet the evidentiary requirements of litigation. The office will certify your search request for an extra \$80 an hour.

The Copyright Office staff will search its indexes covering the records of assignments and other recorded documents as to ownership of copyrights. But the Copyright Office doesn't interpret of the content of its documents or their legal effect. (You may need a lawyer for that.)

Lawyer's Note: Movies are often based on other works such as books or serialized contributions to periodicals or other composite works. If you need a search for an underlying work such as music, you must specifically request such a search of underlying works and furnish the specific titles, authors, and approximate dates of these works.

Supplementary Registration

If you don't get your copyright registration done correctly or completely the first time, you're allowed to amend it later. This is accomplished by a process called supplementary registration.

Supplementary registration is used when the basic registration is incorrect or incomplete. The law provides for "filing of an application for supplementary registration, to correct an error in a copyright registration or to amplify the information given in a registration."⁴ The information in the basic registration record remains unchanged. The supplementary registration is cross-referenced to the record of the original registration.

Recording a Change in Copyright Ownership

You can record assignments and transfers copyright ownership with the Copyright Office. The transfer document must bear the actual signature of the person who executed it, or be accompanied by a sworn or official certification that it is a true copy of the original signed document.⁵

Lawyer's Note: The U.S. Copyright Office also keeps records of all transfers and assignments of a copyright, so you can tell who owns it at a given point in time.

⁴ 17 U.S.C. Section 408(d).

⁵ [17 U.S.C. 205\(a\)](#).

For more information on the specifics of recording a document, consult the Copyright Office publication, *Recordation of Transfers and Other Documents*. You can find this document at the U.S. Copyright Office Web site located at <http://www.copyright.gov/circs/circ12.pdf>