Entertainment Law

Lawyers For The Talent

Richard Dooling

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by Richard Dooling

I Disclaim

I am an author and sometimes a screenwriter. I'm also a lawyer, and I teach Entertainment Law at the University of Nebraska College of Law, but I am not *your* lawyer, and the text you find here is *not* legal advice.

To paraphrase Hunter Thompson:

> The entertainment industry is a cruel and shallow money trench … a long plastic hallway where thieves and pimps run free and good men die like dogs.

It's no place to be guessing about your legal rights. If you need legal advice, please get a lawyer.

What Is Copyright?

> Instead of defining the relationship between a person and "his" things, property law discusses the relationships that arise *between people* with respect to things.
>
> —Bruce A. Ackerman, Private Property And The Constitution 26 (1977)

Copyright is a form of "intellectual property." Like "real property," consisting of land and buildings, intellectual property may be bought and sold, used and borrowed. Consider the following examples.

Amy Author owns a plot of land called The Hundred Acre Wood. Not being a lawyer, Amy tends to think of The Hundred Acre Wood as something she either owns or doesn't own. If she doesn't own it, maybe she rents it from the Farmer in the Dell.

But Amy's lawyer is trained to think of The Hundred Acre Wood not just as a hundred acres of land that Amy owns or doesn't own, but as a bundle of rights (similar to a bundle of sticks). These rights are associated with The Hundred Acre Wood.

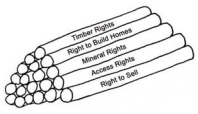

Figure 1: A bundle of property rights

Each stick in Amy's bundle is a land right that Amy can sell or lend to others, or she can sell them all at once to one person.

Consider three hypothetical sticks or rights in Amy's Hundred-Acre-Wood bundle:

1. Amy rents ten acres of The Hundred Acre Wood to Farmer Brown for two years;

2. Amy sells the right to drill for natural gas beneath The Hundred Acre Wood to a fracking company;
3. Amy sells "an easement" to a telecom company, so it can bring its trucks and equipment into The Hundred Acre Wood, bury a fiberoptic cable, and maintain it indefinitely.

Does Amy still own the Hundred Acre Wood? Of course, but now that she has sold certain rights to the land, ownership is more complicated.

Does the farmer own The Hundred Acre Wood? No, but Amy has sold him *the right* to use ten acres of her land for two years. Do the fracking company and the telecom company *own* The Hundred Acre Wood? No, but again they have paid Amy for various *rights* to use or occupy her land.

What if somebody wants to buy the Hundred Acre Wood, but they don't want frackers or fiberoptic cable workers on their land? What sort of "license" did Amy give the frackers and the cable workers?

Is there a public record of Amy's land ownership? Yes. Anybody can do a title search at the register of deeds and see who owns The Hundred Acre Wood.

Intellectual Property

Now Amy builds a cabin deep in the Hundred Acre Wood, where she writes a novel called *Zombies & Vampires*.

The Hundred Acre Wood is real property consisting of the land and buildings and a bundle of Amy's rights protected by property law. Amy's novel is "intellectual property" consisting of her writing and a bundle of rights protected by the U.S. Copyright laws. If Amy's agents and editors and publishers get lucky in the marketplace, Amy's intellectual property may be worth more that her real property.

Consider three simple hypothetical sticks or rights in the bundle of rights to her novel, *Zombies & Vampires*.

1. Amy (via her literary agent) grants Random House the right to print and sell hardback copies of *Zombies & Vampires* in English in North America in exchange for standard royalties of 15% and an advance against royalties of $50,000.
2. Amy (via her literary agent and a foreign sub-agent) grants the Japanese publisher Kodansha the right to print and sell paperback copies of *Zombies & Vampires* in Japanese in Japan in exchange for royalties amounting to 10% of the cover price and an advance of $15,000.

3. Amy (via her literary agent and her Hollywood sub agent) sells Pete Producer an option to develop the film rights of *Zombies & Vampires* for 18 months in exchange for $20,000.

Does Amy still own the copyright to her novel *Zombies & Vampires*? Yes. Does Random House own the copyright to Amy's novel? No, but Amy sold Random House a license to copy, print, and sell her books in English in North America. Likewise neither the Japanese publisher nor Pete Producer "own" the rights to Amy's novel, Amy has given them permission to exploit certain rights on her behalf.

Notice how lucrative it can be for Amy to own the copyright in *Zombies & Vampires* and still make money by licensing rights to others for limited terms. Lawyers, literary agents, and other talent representatives almost always advise the talent not to surrender or transfer copyright in a work, unless the price is high and right.

Is there a public record of Amy's land ownership? Yes. Anybody can do a title search at the register of deeds and discover who owns the Hundred Acre Wood.

Likewise, anybody can visit the public catalog of the United States Copyright Service and do a search to see who owns the copyright to *Zombies & Vampires,* if it had been registered.

History of Copyright

> The Framers intended copyright itself to be the engine of free expression. By establishing a marketable right to the use of one's expression, copyright supplies the economic incentive to create and disseminate ideas.
>
> Harper & Row v. The Nation (US 1976)

The first copyright law was the Statute of Anne, created by an Act of Parliament passed in England in the year 1710.

In 1790, the Framers of the U.S. Constitution had the same idea in mind when they drafted Article I, Section 8, Clause 8, which provides:

> The Congress shall have power … To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

This gets lost in a long list of powers given to Congress. To raise armies, to declare war, to coin money, to levy taxes. But notice one thing. The Constitution explicitly protects only one business. Not farming, not banking, not law or medicine. The

Constitution protects the intellectual property business ("IP"). Nice for authors, artists, inventors, scientists, trillion dollar tech companies, and anybody in the entertainment industry, including the music, video game, and publishing industries.

Congress wasted no time exercising its new power and passed the first U.S. copyright law in 1790. Ever since, Congress has passed laws protecting scientists and other useful artists by securing their exclusive rights to their trademarks, patents, and copyrights.

A "copyright" grants authors and artists certain exclusive rights (see list below) to their intellectual property (the work they created).

Copyright Basics

> Copyright turns the content of protected works into a private good whose authors can grant or withhold consent to others to use and distribute it.
>
> *Entertainment, Media and The Law,* Paul Weiler.

The US Copyright Office does a great job of educating people about the copyright laws. The materials available at copyright.gov are written in plain English for artists, scientists, employees, authors, and yes law students. Under the tab "Law and Guidance Tab," the office provides circulars on various copyright topics. Please read the first 6 pages of Copyright Basics. Stop at page 7, "Copyright Registration").

- Copyright Basics

If this Entertainment Law course is your first exposure to the law of intellectual property, then please watch the Crash Course on Copyright videos:

- Copyright Basics: Crash Course Intellectual Property 2
- Copyright, Exceptions, and Fair Use: Crash Course Intellectual Property 3

Copyright Terms

We do not have time to explore the particulars of copyright terms (the length of time copyright protects a work before it passes into the public domain and can be freely used by anyone). In most of the world, the default length of copyright is the life of the author plus either 50 or 70 years. List of countries' copyright lengths. In the United States

In the United States, the law automatically protects a work that is created and fixed in a tangible medium of expression on or after January 1, 1978, from the moment of its creation and gives it a copyright term lasting for the author's life plus an additional 70 years. For a "joint work prepared by two or more authors who did not work for hire," the term lasts for 70 years after the last surviving author's death.

For works made for hire and anonymous and pseudonymous works, the duration of copyright is 95 years from first publication or 120 years from creation, whichever is shorter.

For more information about works made for hire, see Circular 9, Works Made for Hire under the 1976 Copyright Act.

For our purposes, the shortest and most entertaining introduction to copyright terms in the United States is CGP Grey's YouTube presentation: Forever Less One Day: Meet Copyright!. We saw it in class. It bears rewatching.

Rights Protected by Copyright Include:

- Production of the initial work
- Production of derivative works
- Distribution of the product by sale or rental
- Public performance
- Public display

Who Owns The Rights?

Artists invest time, talent, and money to produce intellectual property, which consumers then presumably purchase the right to enjoy. Simply purchasing a copyrighted work (say, a book), however, does not grant the buyer all of the same rights held by the copyright owner. But artists may also wish to share their work under various alternative licensing schemes:

- Copyleft,
- MIT license,
- Creative Commons, and so on. Copyrights may also be transferred.

For instance, I selected an MIT license for the materials you are reading now. Anyone is free to use and copy these materials.

Copyrightable Works

What is copyrightable?

Copyright protection extends to "original works of authorship fixed in any tangible medium of expression." § 102(a)

All works? Or only "artistic works"? What about "bad" art? What about a few sketches to be used in an advertisement for a circus? Justice Oliver Wendell Holmes addressed the question in 1903.

Bleistein v Donaldson Lithographing Co., (Sct. 1903)

George Bleistein was an artist hired by a circus promoter to design and produce lithographs of dancers and acrobats to be used as advertisements for the circus. When the circus promoter ran out of prints, instead of ordering more from Bleistein, the promoter hired the Donaldson Lithographing company to make copies of the posters.

When Bleistein (the sketch artist) sued, a lower court dismissed his case holding that the prints were just sketches and had "no other use than as a pure advertisement" and had no "connection with the fine arts to give (them) intrinsic value."

The Supreme Court reversed, and Justice Oliver Wendell Holmes wrote the opinion:

> It would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of pictorial illustrations, outside of the narrowest and most obvious limits.

In other words, sketches must be *original,* but otherwise the Constitution and Copyright Statute impose no requirement of aesthetic quality in an intellectual product to merit copyright protection.

Copyright Protects "Original Works of Authorship"

"Originality" requires independent creation of new intellectual products, something that is intrinsically different from research and discovery of already-existing facts. *Feist Publications v Rural Telephone Service* (US 1991).

Copyright protection extends only to an author's expression of facts and not to the facts themselves.

> The discoverer merely finds and records. He may not claim that the facts are 'original' with him although there may be originality and

> hence authorship in the manner of reporting, i.e., the "expression," of the facts.
>
> The valuable distinction in copyright law between facts and the expression of facts cannot be maintained if research is held to be copyrightable.

- *Nimmer on Copyright*.

Enough Original Content to Constitute "a Work"

How much content do you need? Not much. The test is easy to meet, but really there is no test. The copyright registrar and the courts look at each borderline case based on its own facts.

In 1987, Atari games wanted to register the video game *Breakout,* which consisted of little more than a flat image of a paddle and basic colored geometric shapes on a screen. At first, the Copyright Registrar Ralph Oman refused to register the work because it "did not contain at least a minimum amount of original pictorial or graphic authorship, or authorship in sounds". Atari challenged Oman's refusal to award the game copyright protection. and won. The appellate court said:

> For a work to be Copyrightable, it must be fixed. It also must possess a certain low level of creativity which courts have described as "very slight," "minimal," "modest."

In *Feist v. Rural* (US 1991), the United States Supreme Court said that "the requisite level of creativity is extremely low; even a slight amount will suffice."

Because *Breakout* consisted of a series of shapes and images in a particular sequence alongside audio, the Court found it met the requisite level of Copyright.

Even five distinctive musical notes are copyrightable. In *Close Encounters Of The Third Kind*, a sci-fi movie from the 1970s by Steven Spielberg, humans seek to communicate with approaching alien spaceships by using a distinctive series of five musical notes. Famed movie composer John Williams and the filmmakers successfully registered a copyright to protect them. If you'd like to hear the notes, *turn down the volume* on your computer. It's a bit loud: *Close Encounters Of The Third Kind* - five-note sequence.

Fixation

Copyright protection does not require a work to be published, but does require that the work be "fixed in a tangible medium of expression." § 102(a)

> A work is 'fixed' … when its embodiment in a copy or phonorecord … is sufficiently permanent or stable to permit it to be perceived, reproduced or otherwise communicated for a period of more than transitory duration. § 101

***Horgan v Macmillan*, (2d Cir. 1986)**

- Case at Google Scholar.

The choreographer of *The Nutcracker* sued to enjoin publication of a book which portrayed in text and photos how the ballet was presented in New York. The book consisted of 60 photos, with narration describing the action, including scenes not pictured.

The trial court refused to stop publication of the book because "still photos cannot infringe choreography."

On appeal, the 2nd Circuit reversed, saying that taking small but qualitatively significant amounts of the original work violates copyright law even if viewers of the latter can't use these excerpts to recreate the full original.

The case settled before trial.

What Doesn't Copyright Protect?

Ideas

The copyright laws *do not* protect *ideas*. § 102(b) Only the *expression of an idea* is protected, and even then what's protected is the *expression*, not the *idea* expressed.

Research

The copyright laws do not protect research.

Miller v. Universal City Studios, Inc.

Court of Appeals, 5th Circuit 1981

- Case on Google Scholar.
- Wikipedia.

Facts

In December 1968, the college-aged daughter of a wealthy Florida land developer was abducted from an Atlanta motel room and buried alive in a plywood and fiberglass capsule. A crude life-support system kept her alive for the five days she was underground before her rescue.

Gene Miller, a reporter for the *Miami Herald*, covered the story and subsequently collaborated with the victim to write a book about the crime. Published in 1971 under the title *83 Hours Till Dawn*, the book was copyrighted along with a condensed version in Reader's Digest and a serialization in the Ladies Home Journal.

The evidence at trial was conflicting on whether the scriptwriter relied almost entirely on the book in writing the screenplay or whether he arrived at his version of the kidnapping story independently. Both plaintiff and his expert witness testified to numerous similarities between the works. The jury, which had copies of the book and viewed the movie twice during the trial, found the movie infringed Miller's copyright and awarded him over $200,000 in damages and profits.

The most substantial question presented on appeal is whether the district court erred in instructing the jury that "research is copyrightable."

Is Research Copyrightable?

It is well settled that copyright protection extends only to an author's expression of facts and not to the facts themselves… This dichotomy between facts and their expression derives from the concept of originality which is the premise of copyright law. Under the Constitution, copyright protection may secure for a limited time to "Authors … the exclusive Right to their respective Writings." An "author" is one "to whom anything owes its origin; originator; maker; one who completes a work of science or literature." …

Obviously, a fact does not originate with the author of a book describing the fact. Neither does it originate with one who "discovers" the fact. "The discoverer merely finds and records. He may not claim that the facts are 'original' with him although there may be originality and hence authorship in the manner of reporting, i. e., the 'expression,' of the facts." *Nimmer on Copyright* (1980). Thus, since facts do not owe their origin to any individual, they may not be copyrighted and are part of the public domain available to every person.

The district court's charge to the jury correctly stated that facts cannot be copyrighted. Nevertheless, in its order denying defendants' motion for a new trial the court said it viewed:

> the labor and expense of the research involved in the obtaining of those uncopyrightable facts to be intellectually distinct from those facts and more similar to the expression of the facts than to the facts themselves.

The court interpreted the copyright law to reward not only the effort and ingenuity involved in giving expression to facts, but also the efforts involved in discovering and exposing facts. In its view, an author could not be expected to expend his time and money in gathering facts if he knew those facts, and the profits to be derived therefrom, could be pirated by one who could then avoid the expense of obtaining the facts himself. Applying this reasoning to the case at bar, the court concluded:

> In the age of television 'docudrama' to hold other than research is copyrightable is to violate the spirit of the copyright law and to provide to those persons and corporations lacking in requisite diligence and ingenuity a license to steal.

Thus the trial court's explanation of its understanding of its charge undercuts the argument to this Court that the word "research" was intended to mean the original expression by the author of the results of the research, rather than the labor of research.…

The labor involved in news gathering and distribution is not protected by copyright although it may be protected under a misappropriation theory of unfair competition. *International News Service v. The Associated Press,* (US 1918). In the *International News* case, the Supreme Court commented in dicta that while a newspaper story, as a literary production, can by copyrighted,

> The news element—the information respecting current events contained in the literary production—is not the creation of the writer, but is a report of matters that ordinarily are *publici juris*; it is the history of the day. It is not to be supposed that the framers of the Constitution … intended to confer upon one who might happen to be the first to report a historic event the exclusive right for any period to spread the knowledge of it.

Apart from the directory cases, the only decision cited to this Court which lends support for the challenged instruction is *Toksvig v. Bruce Publishing Co.,* (7th Cir. 1950). In *Toksvig,* plaintiff had written a biography of Hans Christian Anderson after extensive research of primary Danish sources. Defendant, who could not read Danish, copied twenty-four specific passages from plaintiff's book in writing her own biography. The Seventh Circuit held the copying of these passages, original translations from Danish separately copyrightable under 17 U.S.C. § 6 (1970), constituted copyright infringement. The court went on to reject defendant's fair use defense, primarily because defendant's use of the translations from Danish had

allowed her to write her biography in one-third the time it took plaintiff. The court said the question was not whether defendant could have obtained the same information by going to the sources plaintiff had used, but whether she in fact had done her own independent research. *Id.* at 667.

Although most circuits apparently have not addressed the question, the idea that historical research is copyrightable was expressly rejected by the Second Circuit in the more soundly reasoned case of *Rosemont Enterprises, Inc. v. Random House, Inc.*, (2d Cir. 1966).

In *Rosemont*, it was alleged that defendant's biography of Howard Hughes infringed the copyright on a series of *Look* articles about Hughes. The district court had asserted in sweeping language that an author is not entitled to utilize the fruits of another's labor in lieu of independent research, relying on *Toksvig*. The Second Circuit reversed. While not challenging the holding of *Toksvig* that substantial copying of specific passages amounted to copyright infringement, it rejected the language regarding independent research:

> We … cannot subscribe to the view that an author is absolutely precluded from saving time and effort by referring to and relying upon prior published material.… It is just such wasted effort that the proscription against the copyright of ideas and facts, and to a lesser extent the privilege of fair use, are designed to prevent.

Rosemont.

The Second Circuit has adhered to its position in the most recent appellate case to address the question, *Hoehling v. Universal City Studios, Inc.*, (2d Cir. 1980). *Hoehling* involved various literary accounts of the last voyage and mysterious destruction of the German dirigible Hindenberg. Plaintiff A.A. Hoehling published a book in 1962 entitled, *Who Destroyed the Hindenberg?* Written as a factual account in an objective, reportorial style, the premise of his extensively researched book was that the Hindenberg had been deliberately sabotaged by a member of its crew to embarrass the Nazi regime. Ten years later, defendant Michael McDonald Mooney published his book, *The Hindenberg*. While more literary than historical, Mooney's account also hypothesized sabotage. Universal City Studios purchased the movie rights to Mooney's book and produced a movie under the same title, although the movie differed somewhat from the book. During the litigation, Mooney acknowledged he had consulted Hoehling's book and relied on it for some details in writing his own, but he maintained he first discovered the sabotage theory in Dale Titler's *Wings of Mystery*, also released in 1962.

Hoehling sued Mooney and Universal for copyright infringement. The district court granted defendants' motion for summary judgment and the Second Circuit

affirmed, holding that, assuming both copying and substantial similarity, all the similarities pertained to categories of noncopyrightable material. The court noted the sabotage hypothesis espoused in Hoehling's book was based entirely on interpretation of historical fact and was not copyrightable. *Hoehling*. The same reasoning applied to Hoehling's claim that a number of specific facts, ascertained through his personal research, were copied by defendants. Relying on the *Rosemont* case, the court stated that factual information is in the public domain and "each defendant had the right to 'avail himself of the facts contained' in Hoehling's book and to 'use such information, whether correct or incorrect, in his own literary work.' "

We find the approach taken by the Second Circuit in *Hoehling* and *Rosemont* to be more consistent with the purpose and intended scope of protection under the copyright law than that implied by *Toksvig*. The line drawn between uncopyrightable facts and copyrightable expression of facts serves an important purpose in copyright law. It provides a means of balancing the public's interest in stimulating creative activity, as embodied in the Copyright Clause, against the public's need for unrestrained access to information. It allows a subsequent author to build upon and add to prior accomplishments without unnecessary duplication of effort. As expressed by the Second Circuit in *Hoehling*:

> The copyright provides a financial incentive to those who would add to the corpus of existing knowledge by creating original works. Nevertheless, the protection afforded the copyright holder has never extended to history, be it documented fact or explanatory hypothesis. The rationale for this doctrine is that the cause of knowledge is best served when history is the common property of all, and each generation remains free to draw upon the discoveries and insights of the past. Accordingly, the scope of copyright in historical accounts is narrow indeed, embracing no more than the author's original expression of particular facts and theories already in the public domain.

The valuable distinction in copyright law between facts and the expression of facts cannot be maintained if research is held to be copyrightable. There is no rational basis for distinguishing between facts and the research involved in obtaining facts. To hold that research is copyrightable is no more or no less than to hold that the facts discovered as a result of research are entitled to copyright protection. Plaintiff argues that extending copyright protection to research would not upset the balance because it would not give the researcher/author a monopoly over the facts but would only ensure that later writers obtain the facts independently or follow the guidelines of fair use if the facts are no longer discoverable. But this is precisely the scope of protection given any copyrighted matter, and the law is clear that facts are not entitled to such protection. We conclude that the district court erred in

instructing the jury that research is copyrightable.

Viewing the record as a whole, the Court is left with a substantial and ineradicable doubt as to whether the jury was properly guided in its deliberations. *See McCullough v. Beech Aircraft Corp.*, (5th Cir. 1979).

Because there is uncertainty as to whether the jury was actually misled, the erroneous instruction cannot be ruled harmless and a new trial is required.

REVERSED AND REMANDED.

Notes On *Miller v. Universal*

> It is well settled that copyright protection extends only to an author's expression of facts and not to the facts themselves.

Quoting its opinion in *Hoehling v. Universal City* (2d Cir. 1980), the Second Circuit observed:

> "the cause of knowledge is best served when history is the common property of all, and each generation remains free to draw upon the discoveries and insights of the past."

Scènes-À-Faire

Definition: Scènes-À-Faire at Wikipedia

> Incidents, characters, or settings which are as a practical matter indispensable, or at least standard, in the treatment of a given topic.

Copyright protects "original works of art." A story about greedy miser is or a cruel slave master, may be protected by copyright, but not the greedy miser or cruel slave master.

I know! Here's a story! It's about a young attractive guy and a young attractive girl. When they meet, they hate each other, but then they fall in love and live happily ever after.

Yes, the story's particular "take" on the romantic comedy formula may be protected. But nobody owns a copyright in star-crossed lovers or greedy misers, or in awkward adolescents finding their way in life, or tortured geniuses who perservere against all odds.

These are Scènes-À-Faire, which most of us recognize as clichés and not copyrightable. Maybe Robert Louis Stevenson could have at least argued with a straight face for copyright protection, if he were the first author to create a pirate

who said "Arrrgh!" and had an eye patch, bandanna, and hook for a hand. But now these elements are not copyrightable. Why? Because they are not *original*.

Names, Titles, Short Phrases, Expressions

> Copyright law does not protect names, titles, or short phrases or expressions. Even if a name, title, or short phrase is novel or distinctive or lends itself to a play on words, it cannot be protected by copyright. The Copyright Office cannot register claims to exclusive rights in brief combinations of words such as:
>
> - Names of products or services;
> - Names of businesses, organizations, or groups (including the names of performing groups);
> - Pseudonyms of individuals (including pen or stage names);
> - Titles of works
> - Catchwords, catchphrases, mottoes, slogans, or short advertising expressions
> - Listings of ingredients, as in recipes, labels, or formulas. When a recipe or formula is accompanied by an explanation or directions, the text directions may be copyrightable, but the recipe or formula itself remains uncopyrightable.

- Circular 34: Copyright Protection Not Available for Names, Titles, or Short Phrases
- Taylor Swift Shakes Off Copyright Lawsuit: "The linchpin of this entire case is thus whether or not the lyrics 'Playas, they gonna play / And haters, they gonna hate' are eligible for protection under the Copyright Act," he writes. "By 2001, American popular culture was heavily steeped in the concepts of players, haters, and player haters. The concept of actors acting in accordance with their essential nature is not at all creative; it is banal."

There may be some remedy under the laws of trademark or unfair competition for the use of business and product names created by another without their permission, but this does not fall under the purview of copyright.

Characters

What if another author writes her own version of a novel about a young magician called Harry Potter? Probably the other author gets sued by J.K. Rowling for infringement because the other novel is too similar to the original Harry Potter, or it

is a derivative work requiring a license. But authors galore may write novels about young magicians and make them original enough to avoid copyright problems.

- Protecting Fictional Characters: Could You Legally Write A New Harry Potter Novel?

Long story short, literary characters are generally not copyrightable. "It is conceivable that the character really constitutes the story being told, but if the character is only the chessman in the game of telling the story he is not within the area of the protection afforded by the copyright …" *Warner Bros. v CBS* (9th Cir. 1954)

Cartoon Characters are copyrightable - *Disney v Air Pirates* (9th Cir. 1978) - cartoons have a visual image rather than just a conceptual quality.

Why Register the Copyright?

Lawyer and programmer, Ken Liu, has a great explanation at the Science Fiction and Fantasty Writers of America site.

> Do I have to register to get copyright protection?
>
> You do not. There was a time when registration made a difference in whether a work was protected by US copyright, but current law is explicit that "registration is not a condition of copyright protection." 17 USC §408(a). Copyright attaches as soon as "original works of authorship" are "fixed in any tangible medium of expression." 17 USC §102(a) In other words, your words are copyrighted as soon as you write them down, whether they're in a notebook, a Microsoft Word file, a blog post, a forum posting, or even a Facebook comment. Registration has nothing to do with it.

Many additional protections come with registration, but probably most important are the possibility of obtaining statutory damages and attorneys fees instead of having to prove actual damages:

> Normally, when someone infringes your copyright, you're entitled only to "actual damages" and "profits of the infringer that are attributable to the infringement" 17 USC §504(b). This can be a burden that makes pursuing a legal remedy not worthwhile: How do you prove the profits that some random web site made from publishing your story without permission? And how do you prove what sales you might have lost because of the web site's unauthorized publication of your story? Since the US operates under the "American Rule" where each party pays

their own lawyers, you might not even be able to afford to pay a lawyer to stop the infringing activity.

But with timely registration, you get the option of electing statutory damages instead. 17 USC §504(c). This can be between $750 to $30,000 per work (and up to $150,000 per work if the infringement was willful). Plus, you may get attorney's fees and costs at the court's discretion, making it more likely that you can retain a lawyer on a contingency fee basis. 17 USC §505. With these benefits, it may well make sense to pursue cases that otherwise you would not.

- Ken Liu, The Benefits Of Copyright Registration.

Recommended Reading & Watching

- Larry Lessig TED Talk on User Generated Content.
- Work-for-Hire Freelance Writing Agreement
- Room For Debate: Blurred Lines

Changelog

- 27-Sep-2018 - edit and add intro
- 10-Feb-2018 - fix header
- 08-Feb-2015 - More edits before merging with ABL
- 25-Jan-2015 - Edited and rewrote before merging with ArtBizLaw Copyright Basics.