

Montana Technology Innovation Partnership (MTIP) assists tech-based individuals and companies to commercialize their innovative solutions. Moving ideas into the marketplace requires attention to protecting the creative works of the owner in a manner suitably oriented to future planning. Intellectual property (IP) is a legal concept which refers to a creation of the mind with potential economic value and for which, exclusive rights are recognized. Types of IP include copyright, trademarks, service marks, patents, industrial design, trade dress and trade secrets. This guide serves as an introduction to the protection of materials under copyrights.

WHAT IS IT

The United States Copyright Office within the Library of Congress defines copyrights as follows:

Copyright is a form of protection provided by the laws of the United States (title 17, U. S. Code) to the authors of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works.

The United States Copyright Office has produced a 12-page guide called "Copyright Basics." This guide is a convenient reference covering fundamental copyright law in the U.S. as well as more detailed information such as copyright international law, length of protection, and transfers. The guide can be found at: www.copyright.gov/circs/circ01.pdf

WHY IT MATTERS

Copyrights are an important three-way balance of 1) maintaining control over what you've created, 2) using that to add value to your company or innovation, 3) avoiding infringement on works by others.

Copyrights play into the life of most companies and are involved in all aspects of commerce. Maintaining control over what you have created begins with recognizing what is protectable as a copyright. Conversely, being knowledgeable about copyrights is important to steering clear of becoming an infringer. Any company that has a website, written materials, instructional or educational tools, brochures and design works has property protectable under copyright law. More specific examples include: building plans drawn up by an architect; photos posted online or provided to a client by a photographer; original choreography, scripting or music that might be developed by an advertising agency; a paper or report written by a student; and drawings developed by an industrial designer. A copyright is created when the original work is implemented in a media, whether or not a registration of the copyright is filed.

In the world of software development, copyrights are the primary means to protecting original source code. In the case of a functional software product created from the capabilities of existing software such as Microsoft's Access® or Excel® or by using open source code, the re-purposing of that existing software can be copyrighted. However, whether or not that copyright owner could sell or distribute their software would depend on whether they obtained appropriate rights to use the original copyrighted code on which it was built.

Copyright infringement is all too easy with access to endless Internet materials. Particularly when using materials for commercial purposes, it is important to obtain permission and/or appropriately credit the copyright owner. Infringement of a copyright is judged by many variables identified in the Doctrine of Fair Use. The guidelines have been developed over many years of case law and take into consideration such things as the purpose of the use (e.g. commercial or nonprofit educational), the nature of the copyrighted work, the amount of the work used in relation to the entire copyrighted work, and the effect of the use on the potential market value of the copyrighted work. The safest course of action is to get written permission from the owner of any copyrighted material before drawing on those works. If that cannot be done, it may be advisable to avoid using the material.

REGISTRATION

In the U.S., no publication, registration or other action with the Copyright Office is required to secure a copyright as the work is “created” when it is fixed in a media or recording for the first time. In this context, the word “copy” means a work that can be read or visually perceived (e.g. a manuscript, painting or photograph) either directly or with the aid of a machine or device (i.e. a Kindle® reader). If a work is created over time, the part of the work that is fixed on a particular date constitutes the created work as of that date. There are, however, significant advantages to registration which establishes a public record of the copyright claim and increases awareness of the rights of ownership. Registration also is required before an infringement lawsuit can be filed in court. Legal fees and statutory damages can only be awarded to an owner who registered a copyright within three months of first publication.

Using the copyright symbol © or the word “Copyright,” along with the year of first publication and the name of the copyright owner, serve as suitable notification to others that the work is claimed by an individual or company. This claim bars others from copying the work for sale or distribution. Examples: © 2014 John Doe or Copyright 2014 John Doe. If John Doe has assigned his copyright to ABC Company, it might read: Copyright 2014 ABC Company.

Online registration through the electronic Copyright Office (eCO) is the simplest, fastest, and most direct way to register a copyright. Registering online costs less than registering through the mail and processing time is shorter. Filing through eCO also allows for online status tracking, and secure payment of fees. At <http://copyright.gov/eco/>, click “Log in to eCO” to begin a new registration. Paper forms can be found using the above link. The e-filing process generally takes about eight months, while paper filing can take up to 13 months.

Registration includes the requirement of hard-copy deposits. A hard-copy deposit is the submission of the best edition of the work to the U.S. Copyright office. The Office requires two complete copies of each piece being registered. Some works can be uploaded using the online system and the hard-copy requirement is waived. Software registration requires opening and closing pages of code but does not require full documentation. Other registration details can be viewed in the updated files at the eCO website referenced above.

Although not required, most applicants use intellectual property attorneys for legal advice regarding the copyright of their works. An attorney who knows copyright law can help to avoid many potential pitfalls. To locate an attorney specializing in IP, consult the phonebook, Google “Montana IP Lawyers,” or contact the attorney referral service of Montana’s Bar Association.

Regarding the cost and duration of a copyright, unregistered use of the © symbol is free. Federal registration with the U.S. Copyright Office costs in the range of \$35.00 - \$220. The calculated duration of a copyright is the life of the creator plus 70 years.

READY FOR THE NEXT STEP?

This Tech Talk Guide™ has been prepared by the Montana Technology Innovation Partnership (MTIP) and does not imply endorsement from the U.S. Copyright Office. A program of the Montana Department of Commerce, MTIP provides no cost guidance to Montana technology-based companies seeking help in R&D funding programs, commercialization and intellectual property matters. For more information, contact the MTIP Program Manager at DOCMTIP@mt.gov or visit MTIP’s website at www.mtip.mt.gov.

