

COPYRIGHT LAW

Paul C. Rapp Esq.
247 Beartown Mountain Road
Monterey MA 01245

www.paulrapp.com

COPYRIGHT LAW

- ⦿ Protects original works of creative expression in a tangible medium, including:
 - ⦿ literary works
 - ⦿ musical works
 - ⦿ dramatic works
 - ⦿ pantomimes & choreographic works
 - ⦿ pictorial, graphic, and sculptural works
 - ⦿ sound recordings
 - ⦿ architectural works
 - ⦿ software code



BASICS

-Original not novel:

Independent creation of identical works is theoretically possible.

-Threshold for "creativity" is low.

-Not Protected:

Ideas, procedures, process, systems, discoveries, facts, lists, names, simple directions

But, the *expression* of these things in a tangible medium is protected



Non-functional

Something purely functional will not be protected

Expressive elements must be conceptually separable from the utilitarian elements

Exclusive Rights (17 USC 106)

- 🎬 -to reproduce, make copies
- 🎬 -to prepare *derivative works*—recast, transformed, or adapted
- 🎬 -to distribute copies
- 🎬 -to perform or display publicly

Who owns the copyright?

- ⦿ -the creator(s), *unless*
- ⦿ -the work is created by an employee in the scope of his or her employment, or
- ⦿ -the creation is subject to a *work for hire agreement* **and** is a contribution to a collective work (magazine articles, etc.), an audiovisual work, a translation, a supplementary work (illustrations to a text, or similar adjunct works), a compilation (collecting and arranging pre-existing works), an instructional text, a test, or an atlas.

WHEN and WHY REGISTER?

The screenshot shows the Copyright Office registration interface. At the top, there are buttons for 'Form', 'Pay', and 'Submit Work'. The 'Case #' is 1-805356551 and the 'Type of Case' is blank. There are 'Continue >>' and 'Save For Later' buttons. A table on the left lists various links and their completion status. The main content area lists different types of work available for registration, such as Literary Work, Work of the Visual Arts, Sound Recording, etc. A red asterisk indicates that the 'Type of Work' cannot be changed after clicking 'Continue'.

Links	Completed
Type of Work	
Titles	
Publication/Completion	
Authors	
Claimants	
Limitation of Claim	
Rights & Permissions	
Correspondent	
Mail Certificate	
Special Handling	
Certification	
Review Submission	

Case #: 1-805356551

Type of Case:

[Continue >>](#) [Save For Later](#)

[eCO Navigation Tips](#)

These are the types of work available in claim registration. Click on a Type of Work listed below for more information about each type.

- Literary Work
- Work of the Visual Arts
- Sound Recording
- Work of the Performing Arts (includes music, lyrics, screenplays, etc.)
- Motion Picture / Audio Visual Work
- Mask Work
- Single Serial Issue
- [Works that include more than one type of authorship.](#)
- [Click here for information on what may be included on a single application.](#)

Select "Type of Work" that you are registering.

Type of Work cannot be changed after you click "Continue." [Click here for more information.](#)

* Type of Work:

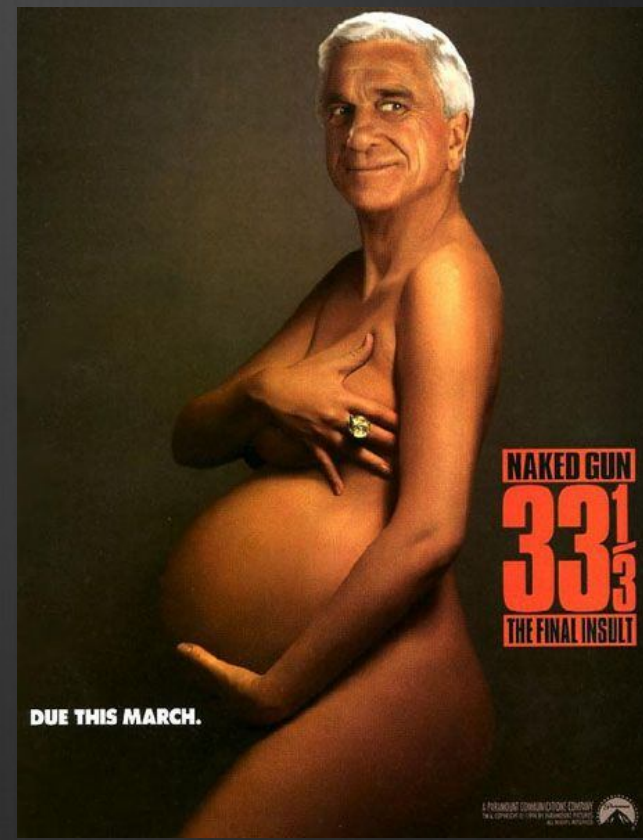
Copyright "attaches" automatically upon a work's creation in a fixed tangible medium.

Registering a claim of copyright with the federal Copyright Office (copyright.gov) provides many benefits, including the ability to legally enforce your exclusive rights, and, if a work is registered prior to an infringement or within three months of initial publication, the copyright owner is entitled to enhanced damage awards, including attorneys' fees, from an infringer.

Copyright protection extends across borders via international treaties, most significantly the Berne Convention.

Limitation on Exclusive Rights: FAIR USE

When the social utility of unauthorized copying exceeds the social utility of enforcing a copyright. Criticism and commentary (including parody), teaching, and news reporting are all examples of fair use.



Infringement

- ⊗ -the violation of one or more of a copyright holder's exclusive rights
- ⊗ -a substantial (more than *de minimis*) taking of the *protectable elements* of a work
- ⊗ -copyright holder is entitled to an injunction, damages, destruction of infringing goods
- ⊗ -criminal sanctions for severe infringements

Length of Protection

- 🎬 -individual: life of author +70 years
- 🎬 Work for Hire (including employee-created works): 95 years
- 🎬 Works created between 1923 and 1978: beware!

Date of First Publication

Before 1923

After 1922 & Before 1978

If published without © notice

After 1922 & Before 1964

If published with © notice, but not renewed after 28 years

After 1922 & Before 1964

If published with © notice & renewed after 28 years

After 1963 & Before 1978

If published with © notice

After 1977 & Before 2003

Created (unpublished) before 1978 & first published before January 1, 2003

After 1977 & Before March 1, 1989

If published without © notice & without subsequent registration

After 1977 & Before March 1, 1989

If published without © notice but registered within 5 years; or published with © notice

On or after March 1, 1989

Published with or without © notice

Published after 2002

Created before 1978 and author died more than 70 years ago

Created by Individual or Joint Authors

Created under Corporate Authorship

Copyright, the Internet, and Digital Media

- ⊗ -same laws apply
- ⊗ -but the effectiveness of the laws are being severely tested
- ⊗ -most dramatically in music and film, but it transgresses all types of works subject to copyright protection
- ⊗ -when everyone has the most powerful copying machine ever known and is connected to the most powerful distribution network ever known, do the copyright laws as currently constructed and interpreted still make sense?
- ⊗ The issue is playing out with proposed laws like SOPA and PIPA, in the courts, and in developing multinational treaties, etc.