



How Copyright Laws Protect Your Work

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by Kathryn Dalli

For many people involved in creative pursuits, knowing how to protect the work is important. Although it may seem daunting, the good news is that it's really a lot simpler than it might first appear.

For starters, the way in which copyright protection is secured is often misunderstood. No publication or registration or other action in the U.S. Copyright Office is required to secure a copyright. While obtaining federal copyright registration affords certain additional rights, and is a good idea, there are state common laws that can provide protection without registration.



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In order to develop an understanding of the relevant law, it is important to understand what a copyright is. Copyright is a form of protection provided to the authors of "original works," including pictorial, graphic, sculptural works, both published and unpublished. The copyright protects the form of expression rather than the subject matter.

Copyright is secured automatically when the work is created, and a work is "created" when it is fixed in a tangible medium of expression or fixed in a copy for the first time. "Copies" are material objects from which a work can be read or visually perceived. If a work is prepared over a period of time, the part of the work that is fixed on a particular date constitutes the created work as of that date.

Federal registration in the U.S. Copyright Office, a relatively simple and inexpensive procedure, is the best protection and should be obtained, if possible. Federal registration allows a copyright owner to sue for infringement in federal court; provides the ability to recover statutory damages for willful infringement; and permits the successful plaintiff the ability to recover attorney's fees.

If a person claims a copyright in a work of art that has not been federally registered and someone infringes on the copyright, suit must be filed in state court under state laws and the copyright holder must prove that he or she was damaged monetarily, which could be difficult. The copyright holder can also obtain an injunction preventing further infringement. In either event, attorney's fees cannot be recovered if he or she is successful.

In addition, it's important to know that when a work is registered, there is a presumption that it was created on the date stated in the registration. This presumption is important for several reasons. Most importantly, if someone makes a claim of copyright infringement and that person's work was

created at a later date than the registered work, that person cannot have a valid claim. Likewise, if a registered copyright holder has a valid infringement claim and the infringer cannot prove his or her work was created before the registered work, the claim will be successful.

A pictorial, graphic or sculptural work will be protected by copyright laws upon its creation in a fixed form of expression. The scope of that protection, however, will depend on whether the work is federally registered with the U.S. Copyright Office. For the best protection, it is a good idea to register the work.

Kathryn Dalli is a partner with [Twomey, Latham, Shea, Kelley, Dubin & Quartararo, LLP](#), and is head of the firm's intellectual property law group. Ms. Dalli has been practicing law for over 30 years and has a diverse background in the arts, business, entertainment and litigation. While in college, she studied art, opera and literature at the university of Pisa, Italy. After law school, she worked at a large international talent agency in Los Angeles, California. [Click here for Kathryn's full bio.](#)

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