

**Maximizing the
Online Economy &
Making the Most of
Your Copyrights**

**Part 2: Visual Art &
Literary Works**

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Disclaimer: Education, Not Advice!

PLEASE NOTE: This workshop is an overview of certain areas of copyright and contract law, and is intended for educational purposes only. This class will not provide legal advice. If you have a specific legal problem, you should consult an attorney directly in a one-on-one session where communication is confidential. The workshop instructor may be able to schedule a consultation with you, or put you in touch with other attorneys who can help, if needed.

About Me

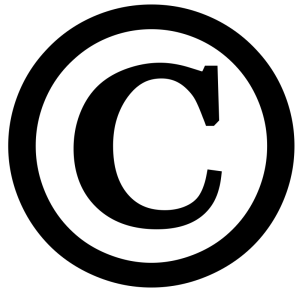
Max Hass

- Entertainment Attorney & Musician
 - Founded Hass Law in 2017 in New Orleans, relocated to Denver in October 2019
 - J.D. from Tulane University
- Primary clients: musicians & producers, filmmakers, photographers, painters, illustrators, and writers
- Previously worked as artist manager, booking agent, and concert promoter

Agenda

1. Copyright Overview
 - What a copyright is, what's eligible for © protection
 - Authors & Owners
2. Important contract concepts
 - Getting clear chain of title
 - Assignment & License
3. Copyright Registration
4. Maximizing your online income
 - Collective Management Organizations
 - Licensing & Commissions
 - E-commerce & Marketing

Intellectual Property: More than just Copyright



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TM ®

≠



Copyright

Trademark

Patent

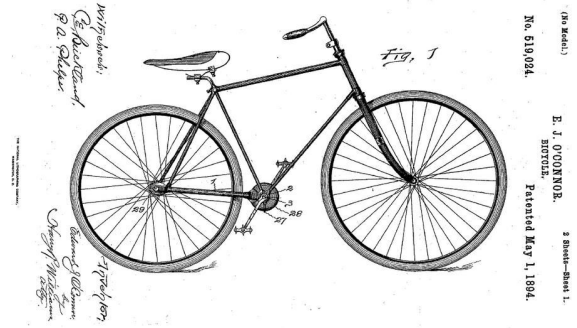
Three basic types of Intellectual Property



VS.



VS.



Copyright

Trademark

Patent

What is a Copyright?

- A form of property - can be bought/sold and “rented out” (licensed)
- Separate and distinct from the artwork itself
- Governed by federal (not state) law
- Comes into existence at same time work is completed
- Owner has a set of exclusive rights for a limited period of time
 - Artist’s lifetime plus 70 years

Exclusive Rights of a Copyright Owner

1. **Reproduce** (make copies of) the work
2. **Distribute** those copies (by sale, lease, licensing, donation, etc.)
3. **Create and/or Authorize Derivative Works**
4. **Publicly Display** the work
 - for works that can be “displayed”
5. **Publicly Perform** the work
 - for works that can be “performed” - BUT does not apply to sound recordings!
6. *For sound recordings only*: **Publicly Perform via Digital Audio Transmissions**

Types of Works Eligible for Copyright Protection

1. **Literary Works:** books, poems, magazines, computer programs, directories, and more
2. **Musical Works (non-dramatic):** music & lyrics
3. **Sound Recordings**
4. **Dramatic Works:** stage plays, musicals, scripts, screenplays
5. **Pictorial, Graphic, and Sculptural Works:** all 2D and 3D visual art (including digital graphics and photographs), maps, and technical drawings
6. **Audiovisual Works:** films & videos
7. **Choreography & Pantomime**
8. **Architectural Works**

Threshold Requirements

1. An original work of authorship,

- Must possess some minimum degree of creativity
- Must be a human author

2. Fixed in a tangible medium of expression.

- Must exist for more than a short time

When do you get a copyright?

The moment the work is fixed in a tangible form.

- Sketches, demos, rough cuts, etc. are enough - the work does not need to be final draft in order to receive copyright protection.
- Registration not required, but still very important for other reasons.

What Can't be Copyrighted?

- Ideas or concepts still in your head (not fixed)
 - Familiar symbols (square, circle, arrow, etc.)
 - Basic listings of contents or ingredients (no originality)
 - Mere variations of typographic ornamentation/lettering/coloring (no originality)
 - The layout, format, or “look and feel” of a web page
-
- Procedures, processes, systems, principles, or discoveries
(covered by patent law)
 - Functional design elements & useful articles **(covered by patent law)**
 - Titles, names (including domain names/URLs), short phrases, slogans
(covered by trademark law)

Important Terminology: “Author” and “Owner”

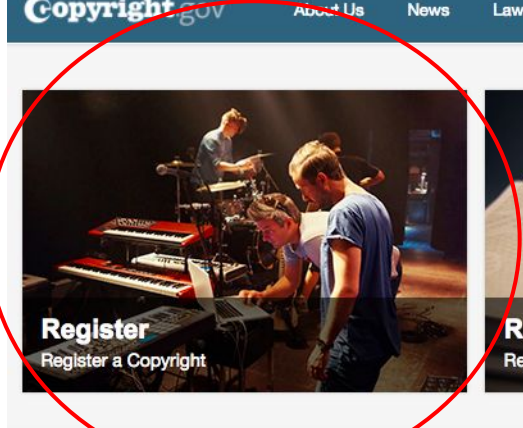
- “Author” = any person who makes a non-trivial creative contribution to the work.
- Anyone who counts as an author of the work is automatically an owner of the copyright in that work.
- “Owner” = the person(s) or company with control over the work - has authority to monetize and make decisions about the work.
- Multiple authors → Co-owners w/ equal shares
- Ownership & co-ownership can be modified by contract

Contracts & Copyright


- Before/during creation of the work: establishing clear “chain of title”
 - Contracts with hired help and/or collaborators
 - Contracts between artist and commissioning party
- After creation of the work: monetizing the copyrighted work
 - Licenses
 - Assignment (sale) of copyright

Copyright Registration: www.copyright.gov


Copyright.gov About Us News Law and Guidance Policy Issues Contact Us Search




Register
Register a Copyright



Record
Record a Document



Research
Research and Certification



RESOURCES



Search Copyright Records

Search the Copyright Public Records Catalog online. 1978 to present.

DMCA Designated Agent Directory

Service Provider Designation of Agent

Schedule of Fees

Fees for Registration, Recordation, and Other services

Archive of Briefs and Legal Opinions

Legal guidance on questions of copyright law

Statutory Licensing

EDUCATION



Fair Use Index

A searchable database of court opinions to make the principles and applications of fair use more accessible and understandable

Frequently Asked Questions

Answers to common questions about copyright

History and Education

Learn about copyright history and search historical documents and publications

Copyright Events

Events of the Copyright Office

Copyright Quick Links

Copyright Law of the U.S.

Title 17 of the U.S. Code

Code of Federal Regulations

Title 37, Chapter II

Compendium of U.S. Copyright

Office Practices

Third Edition

Latest News

Copyright Office Reports Results of Public Inquiry on Mass Digitization Pilot Program

Registration Portal

Important Note: You may register up to 10 unpublished works on the same application, but **YOU MUST SELECT** the new application for a "Group of Unpublished Works." ×

Click here if you need help finding the application for a "Group of Unpublished Works," and **click here** to watch a video that provides step-by-step instructions for completing this application.

The "Standard Application" **MAY NOT BE USED** to register a "collection" of unpublished works. If you submit 2 or more unpublished works on the "Standard Application" the Copyright Office will examine, and if appropriate, register only 1 of your works. All remaining works will be removed from the claim; to register those works you will need to resubmit them using an appropriate application form.

Welcome to the Registration Portal. This is your starting point for all things related to the registration of copyrights. Choose a category below to find out more about the different works typically registered with the U.S. Copyright Office.

[Log in to the Electronic Copyright Office \(eCO\) Registration System](#)

[Registration Processing Times and FAQs](#)

Electronic Copyright Office (eCO)

United States Copyright Office
Library of Congress

User Login

If you are a registered user, please login here.

User ID: *

Password: *

Login

[Forgot Your Password or User Id ? / Reset Your Password ?](#)

If you are a new user, [click here to register.](#)

Welcome!

Welcome to the Electronic Copyright Office (eCO)

You may now use this website to:

- Register your work
- Preregister your work if you [fulfill the requirements](#).

Submit electronic works to comply with a Notice for Mandatory Deposit

NOTE: The eCO System has been confirmed for use with the Firefox browser on the Microsoft Windows 7 Operating system.

Other browsers such as Internet Explorer, Chrome, Safari and Netscape (as well as out-of-date browsers) may work but potentially could show less than optimal behavior when used with the eCO System.

To view and print documents you will need the Adobe Acrobat Reader installed on your system . ([click here to download](#)).

Why Register a Copyright?

- Very strong proof of ownership & important if you want to license your work out to third parties
- Required before filing a copyright infringement lawsuit.
- Eligible for Statutory Damages & Attorney's Fees if work is registered promptly after publication.
- Registration fees range from \$45 to \$65 - very cheap insurance!
- "Poor Man's Copyright" doesn't work

www.copyright.gov (not .com!)

What You Need to Register a Copyright

- Clear understanding of Authorship & Ownership of the work
 - If you used contracts or WFH to obtain © ownership from another person, you need to tell Copyright Office what method you used
- Date of creation, and date of publication of the work
- Info for each author (regardless of whether they're owners):
 - Name, country of citizenship/domicile, year of birth
- Info for owner (“claimant”): name, address, phone, email
- Registration fee
- Copy of work to deposit with Copyright Office

Maximizing Revenues from Your Copyright Online

- Treat your art as a business
 - LLC
 - Marketing
 - Licensing & Commissions
- Collective Management Organizations

From Individual to Small Business

- Three facets still viable: retail, commissions, licensing
- Set up LLC & build branding
 - Asset protection & shield from liability
 - Keep personal and business money separate
 - Trademark law covers logo / company name
- Build website and/or online store
- Make yourself as accessible as possible: updated contact info everywhere
- Marketing: email mailing lists, social media

Licensing & Commissions

- Contracts are vitally important
 - Clear delineation of copyright ownership
 - Payment terms & delivery deadlines
- Create standard policy / procedure
- Endless possibilities for licensing

Collective Management Organizations

- American Society for Collective Rights Licensing (ASCRL): **ascrl.org**
 - Free to join
 - Eligibility: list 3 examples of your published work, including ISBN/ISSN numbers or URLs of websites where work appears
 - Submit a simple form and receive payments within 90 days after claims period closes
- Artists Rights Society (ARS): **arsny.com**
 - Free to join & no annual dues
 - Pays out every 6 months
 - Offers membership option for “secondary rights” - artists who are trade illustrators or do a lot of work for hire

Resources & More Info:

- U.S. Copyright Office Circulars: copyright.gov/circs
 - Circ. 9 addresses Work for Hire: copyright.gov/circs/circ09.pdf
 - Circs. 40 and 40a: visual art
 - Circ. 42: photographs
 - Circ. 44: cartoons and comic strips
 - Circs. 61-66: literary works
- Fair Use Index: copyright.gov/fair-use/fair-index.html
- ALGA website & manual: aiga.org
- NOLO: nolo.com/legal-encyclopedia/contracts
- Legal Information Institute: [law.cornell.edu/wex/contract](https://www.law.cornell.edu/wex/contract)
- Artist Rights Society: <https://www.arsny.com/>
- American Society for Collective Rights Licensing:
<https://www.ascrl.org/how-it-works.html>

Thanks to:



CBCA.org

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Releases

- Rights of privacy and publicity belong to the subject, while copyright belongs to the photographer - neither right supersedes the other
 - Common best-practice: use releases to get permission and avoid future lawsuits
- Right of Privacy: protects every individual's right to keep their own life private; implicated whenever someone's name, face, or voice appears identifiably
- Right of Publicity ("Personality Rights"): protects an individual's right to make commercial uses of their own image (name, face, voice, silhouette, etc.) - only recognized in 28 states

Work For Hire Doctrine

- Artist works for a 3rd Party to create a specially commissioned work.
- Requirements for WFH doctrine to apply:
 - a. Artist is W-2 Employee and has created work w/i scope of employment, OR
 - b. Artist is an independent contractor, and:
 - Commissioned work falls into one of nine statutory categories, AND
 - Artist signs a written contract that includes the words “work made for hire.”
- Effect of WFH: the hiring party is considered the author of the work, and thus the owner of the copyright. If WFH doesn't apply, hiring party can still get copyright ownership through an assignment contract.