



## Know Your 'Rights

How do you protect your work and avoid infringing on somebody else's? Legal experts sound off on common copyright issues.

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Despite the importance of intellectual property protection in the global marketplace, many executives are hard-pressed to define the differences between a copyright, a trademark and a patent—or to explain how to secure one.

According to the United States Patent and Trademark Office, a trademark is a word, phrase, symbol or design that identifies and distinguishes the source

of the goods of one party from those of others, and a patent is a limited-duration property right relating to an invention, granted by the U.S. Patent and Trademark Office in exchange for public disclosure of the invention. A copyright, meanwhile, protects original, creative works of authorship, such as writings, music and works of art.

Many businesses' IP concerns primarily relate to trademarks and

copyrights. While the former helps protect company and brand names, the latter helps guard against the repurposing of companies' offerings, innovations and proprietary content. *Marketing News* sought advice from the experts on how to secure a copyright, how to refrain from infringing on someone else's and how to protect your copyrighted material on the global stage.

### Copyright Registration

"Anything that reflects someone's creativity, there's a good chance it's protected by copyright: paintings, photos, music ... a toy, a sign, a mural or a specific design on a T-shirt," says Jeffrey Greenbaum, managing partner of New York-based law firm Frankfurt Kurnit Klein & Selz and chairman of the Global Advertising Lawyers Alliance, a network of independent law firms that advises marketers on intellectual

property matters. “For something to be protected by copyright, there are no formalities required. It used to be, a long time ago, that if you didn’t include a copyright notice, if you didn’t register it, if you didn’t renew it, then you could actually lose your copyright. That’s not the law today.”

In the United States, work is automatically copyrighted once it’s written down or recorded and copyright registration isn’t required. In other words, you hold the copyright to all exclusive works automatically—but it’s still best to register for an official copyright to ensure that your work is legally protected, says Mark Partridge, founder of Partridge IP Law, a Chicago-based law and IP strategy firm. “If you have to ask somebody to stop using your content, you’re more likely to have your demand respected if it’s supported by a registration. That can save you a lot of money in the long run. If you have it registered before the infringement occurs, you’re required by the copyright statute to recover statutory damages. It can be very hard to prove actual damages, so if you don’t have it registered before the infringement occurs, you’re going to be limited to actual damages, which are difficult and expensive to prove.”

Furthermore, if you register for a copyright, you’re entitled to recover your attorney’s fees in infringement lawsuits, Partridge adds, which makes the \$35 copyright registration fee worth your while. “It’s very likely that a copyright infringement case will cost well into the six figures,” he says. “The difference in enforcing your rights, between a registered and a nonregistered mark, can be huge.”

To register for a copyright, you simply fill out a two-page form with the U.S. Copyright Office, either via mail or on its website, Copyright.gov. Copyrights cost \$35 for a single author or \$55 for multiple authors, and copyright protection lasts for the life of the author plus 70 years. Copyrights filed online often are processed within six months to a year, but as soon as you submit

your application, your work is protected by U.S. law.

### Infringement Issues

For marketers, copyrights often become an issue when the possibility of infringing on someone else’s intellectual property arises, Greenbaum says. “Copyright registration is a prerequisite to bringing a lawsuit, but it’s really one of the least important issues for marketers because it’s highly unlikely that an advertiser is ever going to sue another advertiser for copyright infringement. The issue, more often than not, is to try to avoid being an infringer.”

When you’re producing print or TV advertising or other marketing materials, ask yourself if there’s anything in the ad that was created by someone else that reflects originality or creativity, he says. “Marketers might say, ‘Hey, I found this great photo online and I want to share it with people.’ If they see it online and there’s no copyright notice, they think, Can I use it? The answer is probably not. It’s probably protected by copyright. Try to figure out who created it, and when and where they created it. Once you have that information, you can start to determine whether something’s protected by copyright or not.”

Online search engines make it easier to spot and catch copyright infringers, Partridge says. “You assume you can just grab that image online when you create your PowerPoint presentation or ad. You need to remember that somebody owns that” and that your unpermitted use can be easily discovered.

Hire a lawyer for help in determining whether your marketing materials would infringe on someone else’s copyrights, Greenbaum says. “Too many marketers are constrained in their creativity and are limited in what they can do because they don’t have lawyers who fully understand the issues ... and they end up making big mistakes that will cost them a lot of money.”

### Global Security

Rules for international copyright protection are governed by the Berne

Convention for the Protection of Literary and Artistic Works, which has about 200 member countries. “Much of the practical advice we give in the United States applies overseas, as well,” Partridge says. “A foreign national in a country that’s a member of the Berne Convention gets the same treatment in the foreign country that’s a member. ... That means that if you’re in the U.S. and you want to enforce your rights in a foreign country, you have the same protection that a foreign national in that country gets.”

However, protecting your copyrights overseas can be a challenge, and you shouldn’t assume that laws in other countries work exactly the way they do in the United States, Greenbaum says. “If you have valuable works that you want to protect around the world, you have to leave plenty of time in the process and budget accordingly so that you can consult with local counsel.”

Partridge agrees. “We find the best success when we find somebody who’s well-connected in that country to be the messenger of the objection. Rather than us send the demands, we’ll have a local attorney in Russia or China send the demand so the person who gets it knows that they’re dealing with somebody who’s local and able to take this into court.”

Copyright infringement is common in China, and in other countries including Russia that have copyright enforcement issues. There’s no foolproof method for protecting your copyrights overseas, but it’s best to try all the same, says Frederic Haber, vice president, general counsel and secretary of the Danvers, Mass.-based Copyright Clearance Center, which offers rights licensing technology solutions to academics and businesses. “Copyright law ... is only as good as the legal system in which you’re trying to protect the rights. China has now figured out that there’s great value in protecting intellectual property under a legal regime that’s understandable and consistent. Within 30 years, they’re probably going to have a pretty good system.” ■