

Creative Protection

Creative thoughts, once expressed in the form of writing, a sketch, a sculpture, a home video, a dance routine, a song, a photograph or computer software, can be protected by copyright protection. Copyright protection is governed by the Copyright Act of 1976. Under the Act, any form of creative expression is protected once reduced to a tangible medium, for a period commencing with reduction to that tangible medium and continuing until fifty (50) years after the death of the creator. There is no registration requirement, as in patent law, to be afforded copyright protection. The copyright may belong to the creator, may belong jointly to two or more people, or may have been transferred by the creator(s) before or after creation. For instance, an artist needing financial backing while creating his "masterpiece" may transfer a portion of his copyright protection in that masterpiece in exchange for food and shelter.

Copyright protection focuses on the expression of an idea, regardless of the form in which the idea is expressed. That expression must originate with the creator, that is, it must not have been copied from someone else's expression. For example, many of you may have the idea that "love is a wonderful thing". If you choose to express that idea in song, poetry or painting, the manner in which you express that idea is protected if the expression originates with you.

In 1966 the Isley Brothers recorded a song by the name of "Love Is A Wonderful Thing". The manner in which they expressed that idea originated with them and was protected under the common law and then existing copyright law. In 1991, Michael Bolton expressed that same idea in a song by that same name. In late April of this year, however, a jury found that Bolton's expression of that idea did not originate with him, but was copied from the earlier Isley Brothers expression of that same idea. The Isley Brothers were, therefore, awarded a portion of the profits earned by Bolton, which news reports indicate may be millions.

Copyright violations may be unintentional. In 1976 a court in New York found that George Harrison of the Beatles had heard and subconsciously copied the score from a song by the Chiffons called "He's So Fine" into his song "My Sweet Lord". Harrison admitted having heard the song at some point, but claimed never to have intended to use the score in his later song. The jury found that he had nonetheless subconsciously copied the earlier score.

Protection of creative ideas by copyright does not extend solely to protection in the form in which those ideas were originally created. Protection extends to the right to: 1) reproductions of the expression, whether public or private; 2) all derivations from the expression, whether public or private; 3) public

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distribution of the expression; 4) public performance of the expression; and 5) public display of the expression.

Reproduction of copyrighted materials is becoming a "hot topic" in the law. The bootlegged recording, whether made at home or by a criminal element in society and then sold, is a violation of copyright. A single computer software package sold to be installed on one office computer, but installed on every free standing computer in the office and loaned to employees for installation on their home computers, is a copyright violation. Copying articles from the library's book or magazine shelves, and purchasing one textbook or study guide and copying it for the entire study group, are copyright violations. In each instance, the copyright owner was entitled to be compensated for reproduction of his original creation, and in each instance that creation was reproduced without the copyright owner being compensated.

Software manufacturers are becoming more diligent in enforcing their rights under the Copyright Act, as they sometimes go into the workplace and do software audits to determine if the software installed on each computer terminal was separately purchased, or if one software package was used to install the software onto all of the terminals. Authors also have begun enforcing their rights. Texaco Inc. recently was found guilty of copyright infringement because its research scientists had made copies of articles in scientific journals for their files without each scientist purchasing those journals.

There are instances when copyrighted works may be reproduced without violation. Television studios are permitted to make copies of program transmissions so that they can be shown in different time zones. Magazines, newspapers and television shows may quote or show portions of copyrighted materials for the purpose of offering critiques of those materials, or for reporting the news related to those materials. More recently, a rap group's parody of the Roy Orbison song "Oh Pretty Woman" was found not to be a copyright violation under the "Fair Use" doctrine, as a form of free speech.

Remedies for copyright violation include the right to: 1) injunctive relief; 2) money damages and lost profits; 3) impoundment of the violating materials; 4) attorneys fees and costs; and 5) criminal penalties. Even though copyright protection begins when the materials are first reduced to tangible form, a lawsuit under the Copyright Act cannot be brought until the materials have been registered and a copy deposited with the United States Copyright Office.

