

M319

Secrets to Protecting Valuable Copyrights & Trademarks

Attendees will learn how to:

- Select a logo, design, phrase that can be protected by trademark
- Protect their book titles, program titles, and other valuable intellectual property
- Register their Copyrights and Trademarks without having to hire an expensive lawyer.

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Nothing in this oral presentation nor anything in these written materials is to be construed as legal advice. This presentation and these materials are meant to be a guide to general principles of law. You should consult your legal counsel to determine the applicability of these rules to your particular case.

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About Francine Ward, JD



... Georgetown Law Center educated lawyer, twice published author, two time marathon runner, achievement coach, and motivational speaker with a proven track record of achievement. She inspires female executives to go beyond the obstacles that prevent them from even greater achievement.

The author of **Esteemable Acts: 10 Actions for Building Real Self-Esteem** (Random House/Broadway 2003), **52 Weeks of Esteemable Acts: A Guide to Right Living** (Hazelden 2005), and the **NEW Staying Legal Guide: A Guide to Copyright & Trademark Use** (ASTD Press 2007).

Francine is admitted to the New York State Bar, and is a member of the American Bar Association's Intellectual Property Law Section, the National Speakers Association, the American Society for Training & Development, and the International Coach Federation. She's also passionate about community service, and supports Rotary, Marin Abused Women Services, Marin Services for Women, and sits on the Board of the *National Council for Alcoholism and Other Drugs —Bay Area*. Her new project: The Esteemable Acts Camp for Girls.

For more information on Francine Ward, her books, coaching and mentoring services, e-books, e-Courses, CDs and other products, please feel free to browse her web site: www.esteemableacts.com; stayinglegal.com

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What is a Copyright?

Protects an original
work of art /
authorship that has
been reduced to a
tangible form.

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What is Protected by Copyright?

1. Novels & other fiction
2. Nonfiction & e-Books
3. Screenplays
4. Handouts
5. Online training materials
6. Musical compositions
7. Sound recordings
8. Cartoons & other drawings
9. Web sites
10. Brochures / e-Brochures
11. One sheets
12. Newsletters
13. Magazines / e-Zines
14. Streaming videos
15. Audio cassettes/CDs
16. Workbooks
17. Online marketing materials
18. Overheads
19. Pamphlets
20. Articles
21. Video games
22. Software
23. Motion pictures
24. Photographs
25. Sculptures
26. Computer programs, source code,
27. e-Surveys, Questionnaires



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What is NOT Protected?

1. Ideas
2. Work containing no original material
3. Plain Facts
4. Book titles, names, short phrases, slogans
5. Procedures, methods, systems, processes
6. Anything that has lost its protection
7. Anything in the public domain



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Copyright holders have the right to...



1. Reproduce
2. Distribute
3. Display
4. Perform
5. Sell or license rights to others
6. Create a derivative work

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How long does a Copyright last?

A copyright lasts for life of the copyright holder, plus seventy years.

[Life + 70 years]



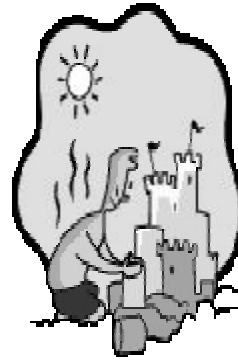
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Who Owns a Copyright?

The original creator of a work of art or work of authorship owns the copyright to that work, UNLESS, they've transferred their rights by written agreement to someone else or when it's a work made for hire:

1. A work created by an employee within the scope of their employment.
2. A commissioned work created by an independent contractor where a written agreement exists.



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How to Protect your Copyrights

1. Always place the Notice symbol on your Work:

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2. Register with U.S. Copyright Office

[www.loc.gov/copyright]



Benefits of Registration

- Establishes a public record
- You receive a Certificate of Registration
- You can sue for infringement
- You may receive statutory damages (i.e., \$750 to 20,000, and if willful up to \$150,000)
- You may receive attorney's fees

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How to Register Your Work

Send:

1. A correct and properly completed application form (i.e., TX, SR, VA, PA, SE)
2. A nonrefundable filing fee of \$45
3. A cover letter addressed to the Library of Congress
4. A stamped, self-addressed postcard addressed to yourself
5. A non-refundable deposit of the work (See Copyright Basics, Cir. #1)

To:

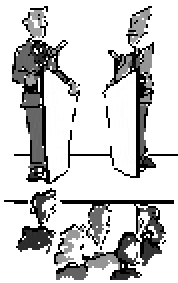
Library of Congress
Copyright Office -- Registrar of Copyrights
101 Independence Avenue, SE
Washington, DC 20559-6000



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Tips on Protecting your Copyrights



1. Know what you own
2. Make sure you own what you think you own
3. Don't sign away your rights inadvertently
4. Read everything BEFORE you sign
5. Understand what you read
6. If you don't ask questions
7. Place notice symbol on all Copyrightable work
8. Register your work

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What is Copyright Infringement?

The use of someone's copyright protected material without their permission.

THEFT. STEALING.

Examples of Infringing Behavior

- Photocopying material (i.e., articles, cartoons)
- Use of quoted material
- Reproducing testimonial letters
- Downloading music from the Internet
- Copying material from the Internet
- Performing someone else's material
- Going beyond the scope of a license
- Using clips from videos, movies



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Contributory Infringement

A third party can be held liable for copyright infringement even if they don't actually commit the act if:

1. They knew or should have known about the infringing activity, and
2. Induced, caused, or materially contributed (substantially participated) in the infringing conduct of another



Vicarious Infringement

A third party can be held liable for copyright infringement even if they don't actually commit the act if:

1. They have the right and the ability to supervise the infringing activity, and
2. They derived a direct financial benefit from the activity

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What is Fair Use?

When you can legally use someone's copyright protected material without permission. Fair Use is NOT infringement. There are 4 factors the court takes into consideration when determining if a use is a fair use, thus legal:

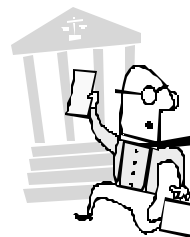
1. What is the purpose / character of your use?
Is it transformative? Commercial vs. non-profit educational use?
2. What is the nature of your use?
Acceptable uses include satire, parody, criticism, comment, news reporting, teaching, scholarship, and research
3. How much are you using?
Does it go to the essence of the work or the heart of the book?
4. What is the market impact?
Does your use affect the copyright owner's ability to make money?

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What is the Public Domain?

1. Works created by employees of the federal government, within the scope of their employment
2. Facts and events. (The creative expression of those facts is protected)
3. Works created prior to March 1989 where no notice existed
4. Works created, but where the copyright wasn't renewed



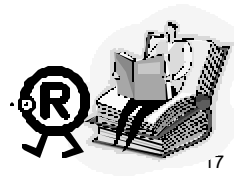
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What is a Trademark?

A trademark is a distinctive word, name, phrase, logo, design, symbol, sound, color, smell, or a combination of the above, which identifies the source of the goods or services. There are four factors to consider when choosing a mark that can be protected:

1. It must be a trademark, service mark, collective or certification mark
2. It must be a device, such as a word, symbol, or logo
3. It cannot be confusingly similar to another mark
4. It must be *distinctive*
 - Coined / Fanciful (e.g., Kodak, Microsoft)
 - Arbitrary (unrelated, e.g., Dominos Pizza)
 - Suggestive (hints at, e.g., Coppertone Suntan Lotion, Huggies Diapers, Ever-Ready Batteries)
 - Descriptive (NOT, unless ...)
 - o Book series
 - o Secondary meaning



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Device	Examples
Words	Xerox, Microsoft, Netscape, Huggies, Duracel
Names	McDonalds
Symbols	swoosh for Nike, the Peacock for NBC network, NSA with microphone
Sounds	doink doink sound on the television show Law & Order, Intel chimes, Aflac duck quack
Colors	color pink used in fiberglass insulation products
Logos	Stylized blue clock (Quicktime), Microsoft windows
Package designs	Distinctive bottles, e.g., Coke, Ballantine whiskey
Smells	Fragrant sewing thread & yarn
Numbers/ Letters	V-8 vegetable juice, Seagram's 7 whisky, CBS, ABC, NBC

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Duration of a Trademark

A Trademark lasts forever, as long as, you renew it every 10-years and file a **Declaration of Use** between the 5th and 6th years.



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How to Protect Your Trademarks.

1. USE of your mark is the key!
2. Use the appropriate symbol: TM, SM, or ®
3. Don't let mark become generic (e.g., aspirin, thermos, escalator, yo-yo, cellophane). ALWAYS use as an adjective, not a noun.
4. Monitor your mark
5. Send cease & desist letter if necessary
6. Register your mark
7. Renew your mark



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How to Register Your Mark

1. Make initial determination of classification (How are you going to use it)
2. Do a thorough search
3. Analyze the Report carefully
4. Select the proper application form
5. Submit specimens
6. Pay the Fee
7. Respond to USPTO inquiries/requests immediately



RECAP on Protecting your Copyrights & Trademarks

1. Know what you own
2. Make sure you own what you think you own
3. Don't sign away your rights inadvertently
4. Read everything BEFORE you sign
5. Understand what you read, if not, ask questions
6. Use Copyright notice symbol
7. Register your work
8. USE your trademark with appropriate symbol
9. Don't let mark become generic
10. Register your mark
11. Renew your mark

Useful Resources

Library of Congress --- www.loc.gov/copyright
(Official Copyright Office web site, replete with FAQs, downloadable forms, updated information)

Copyright Clearance Center --- www.copyright.com
(Source for articles from newspapers and magazines)

Media Image Resource Alliance --- www.mira.com
(Source for photographs and online images)

Music Bakery --- www.musicbakery.com
(Royalty free music)

Broadcast Music Incorporated (BMI) --- www.bmi.com
(A performing rights organization which offers music licenses)

American Society of Composers, Authors, and Publishers (ASCAP) --- www.ascap.com
(A performing rights organization which offers music licenses)

Motion Picture Licensing Corporation --- www.mplc.com
(Provides licenses to use videos and film clips)

United Media --- www.unitedmedia.com
(Publishing organization that licenses the use of cartoons)

The Nolo Press --- www.Nolo.com
(Resource for legal products & information)

Freeadvice --- www.freeadvice.com
(Resources for basic legal information)

The Publishing Law Center --- www.Publaw.com
(Resource for legal publishing information)

Stanford University web site on Fair Use --- <http://www.fairuse.stanford.edu>
(Resource for legal information on Fair Use)

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