Copyright Facts

The Q and A of Intellectual Property

Presented by:

AMERICA'S SBDC MONTANA

1 What Does Copyright Law Protect?

Copyright law protects the expression of an idea. It does not protect the underlying idea. Copyright law applies to creative works such as movies, books, paintings, sculptures, photographs, musical compositions, sound recordings, and jewelry designs. Software programs are also protected by copyright law.

2 What Are the Benefits of a Copyright Registration?

Put simply, you cannot pursue a legal claim for copyright infringement unless the work has been registered with the U.S. Copyright Office. You may include a proper copyright notice in or on the work, but the mere fact that you own the copyright does not give you the right to sue. An unregistered copyright is a right without a remedy. Furthermore, the work must be registered before the infringement begins (or, for published works, within three months of the date of first publication) in order for the claimant to qualify for statutory damages. If statutory damages are available, you can ask the court to award up to $150,000 per act of willful infringement without having to prove actual damages. Attorneys' fees may be awarded to the prevailing party in exceptional cases.

3 Why Copyright Software?

To register the copyright in a software application, the applicant must file the source code — that is, the human readable code that software programmers write and that is compiled into object or machine-readable code — with the U.S. Copyright Office. Source code is analogous to the words written by a novelist; in the latter case, copyright law protects the way the writer expresses her story, but it does not protect the underlying story plot. In the context of software programs, courts have come up with the abstraction-filtration-comparison test for determining to what extent software is protected by copyright. Under the abstraction step, the court must determine where to draw the line between source code (literal instructions) and functionality (the ultimate abstraction). Under the filtration step, non-protectable elements of the software are filtered out. Under the comparison step, the court compares what is left of the copyrighted software after the abstraction and filtration steps to the allegedly infringing work to determine whether the copyrightable aspects of the software have been copied. The bottom line is that a copyright registration for software protects more than just literal copying of the source code, but it does not protect the underlying functionality.

4 Are Copyright Submissions Confidential?

Generally speaking, the copyright office is not obligated to maintain the confidentiality of your application or deposit. (The deposit is usually a photocopy or sample of the work to be registered.) In fact, Section 704 of the Copyright Act states that all materials deposited with the Copyright Office are the property of the United States Government. Section 705 requires the Registrar of Copyrights to keep records of all deposits and registrations and to make those records open to public inspection. Registrations can be searched on the Copyright Office website www.copyright.gov by author name, title of the work, or registration number. When a record is pulled up, certain data concerning the registration will be displayed, but the deposit itself is not made available online. Deposits may be viewed at the Library of Congress pursuant to a written request and upon payment of a fee. The Copyright Office does not publish deposits, and copies will not be made without express, written permission from the author, his agent or heirs, or unless the copy is requested for purposes of litigation.

5 What Is Copyright Fair Use?

You may use someone else's copyrighted work only if such use meets the criteria for copyright fair use. Contrary to popular belief, there is no rule that you can modify a copyrighted work by a certain percentage to meet the fair use test. In fact, the fair use determination is based on four factors: whether the work is commercial or non-commercial, the nature of the copyrighted work (i.e., how original it is), how much of the work is used, and whether the use has an adverse impact on the market value of the work. This is a qualitative, not a quantitative, test. Not all non-commercial uses constitute fair use.

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MTSBDC@mt.gov Www.SBDC.MT.gov 406-841-2747