

Do You Need Copyright Protection for Your Website?



Companies spend a considerable amount of time exploring ways in which intellectual property laws can help protect and exploit their assets. Invariably, they look to trademark and patent laws to serve their needs, while copyrights remain an underutilized means for securing business assets. Copyright issues are especially relevant for companies with a great deal of online content, because these companies make significant investments in creating and maintaining valuable website materials for the public to view. Companies can use copyright registrations as a tool to protect their investments, as copyrightable information posted on the internet is at the tip of a potential infringer's fingers. An infringing party may copy a company's valuable online content, including designs, photos, text, images, sound, and video, with the click of a mouse. As such, companies should always consider whether obtaining copyright registrations for websites is worthwhile.

Most people know that books, music, artwork, and films are copyrightable because every now and then they hear about copyright cases in the news dealing with famous books, songs, or movies. In 2015 alone, courts decided several landmark copyright cases, including the Google Books case and the Robin Thicke "Blurred Lines" case. However, a company should be mindful that, even if it

does not own rights to famous books or movies, it likely owns a substantial number of valuable copyrightable works in the form of its websites, computer programs, databases, company manuals, training materials, catalogs, and promotional and advertising materials.

Website content in particular may qualify as copyrightable in several ways depending upon the nature of the website. Generally, if a website is "published," its registration will extend only to content that is "published" as of a particular date. That particular version must be "deposited" with, or copied and sent to, the Copyright Office. Thus, if a website is "published," a company must regularly register any new or revised material that it wishes to protect. If, on the other hand, a company's website is considered "unpublished," protection will extend to all copyrightable material on the website, regardless of the date it was posted.

Notably, website publication must be carefully considered, as copyright laws do not explicitly determine when an online transmission is "published." Determining whether a website is "published" is not as intuitive as it may sound, as posting and displaying content for the whole world to see does not necessarily constitute "publication" in itself under the copyright laws. Rather, for "publication" to occur, a company must expressly or impliedly authorize distribution of the materials to end users, who must be able to keep copies. For instance, if there are buttons on a website that invite users to download, save, or email materials, that could evidence an implied authorization for distribution and retention of copies. On the other hand, a statement prohibiting distribution and reproduction of materials, or the use of technological means to block distribution and reproduction, would evidence a lack of publication. Ultimately, it is up to the applicant to establish whether the website has been published by looking at such

circumstances. If publication is determined, the accuracy of the publication date is critical, as it establishes the specific content to which the copyright registration and protection extends.

Finally, while an owner of an original work of authorship enjoys copyright protection rights as soon as the work is in a “fixed, tangible medium,” a copyright owner cannot legally enforce its rights without a copyright registration. Further, statutory damages from infringers are only available when a work is registered before the infringement occurs, or within three months of “publication,” depending upon the circumstances. Accordingly, filing a copyright registration for a website early and often (if published and frequently updated) gives a company the best chance of protecting its website from infringement and recovering any losses if it is infringed.

Roetzel has experience in assisting clients with assessing and registering the copyrightable content of websites, as well as other materials. Please reach out if you have questions about your intellectual property needs.

ABOUT THE AUTHORS

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Lindsie focuses her practice on intellectual property law with an emphasis on copyrights, information & emerging technology, and trademarks. She also practices in the areas of transactional corporate law as well as mergers and acquisitions. While attending the University of Akron School of Law, Lindsie participated in the United States Patent and Trademark Office's Law School Clinic Certification program. The program allows students enrolled in select law schools to practice Intellectual Property Law before the Patent and Trademark Office.

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Sue serves as trademark and intellectual property counsel for clients in a wide variety of industries, ranging in size from individual proprietors to multinational corporations. She focuses her practice on trademarks, both domestically and internationally, and has extensive experience in managing large and complex international and domestic trademark portfolios, as well as in counseling clients on all aspects of trademark protection, trademark enforcement, and branding strategy.

She represents clients in trademark and other intellectual property disputes, including trademark opposition and cancellation proceedings at the Trademark Trial and Appeal Board and Uniform Domain Name Dispute Resolution Policy (UDRP) proceedings. Sue also handles a variety of trademark infringement, trade dress infringement and copyright infringement matters in federal court. She advises clients on copyright issues, handles and negotiates the resolution of copyright disputes and other intellectual property disputes, and provides clients with strategic analysis regarding the development and protection of their intellectual property rights.

Sue's practice also includes negotiating, drafting, implementing and advising clients with respect to agreements affecting intellectual property ownership and rights, including trademark and copyright licensing and assignment agreements. She negotiates, drafts and assists in the implementation of complex software licensing agreements. Sue has assisted small business clients with all legal aspects of setting up and launching online and internet-based businesses, and has handled all legal aspects of publishing and media production for clients' creative endeavors. Her clients include manufacturers, retailers, utility companies, financial companies, media companies, healthcare organizations, health insurance providers, nonprofit organizations, educational institutions, and other large and small businesses.

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Terry regularly serves as outside corporate and trademark counsel to clients ranging from owners of closely-held businesses to large, publicly-traded corporations. He advises business owners, corporate executives, and in-house attorneys with respect to a variety of corporate, M&A, intellectual property, trademark, technology, licensing, internet, and domain name matters.

His corporate and M&A practice includes negotiating and drafting domestic and cross-border merger, acquisition, and divestiture agreements; joint venture agreements; distribution and supply agreements; equipment purchase agreements; equipment lease agreements; purchase order terms and conditions; terms and conditions of sale; buy-sell agreements; shareholder agreements; and asset-based loan documentation. He also advises clients with respect to corporate governance issues, Uniform Commercial Code (UCC) sale and secured transaction issues, and other corporate matters.

Terry's intellectual property and trademark practice includes negotiating and drafting software, trademark, and technology license agreements; technology development agreements; IT services agreements and trademark coexistence agreements. His work also extends to securing, enforcing and expanding clients' domestic and international trademark rights by managing global trademark portfolios for clients. These portfolio management activities include clearing new trademarks; developing global trademark filing and enforcement strategies; managing trademark and domain name watch service programs; and conducting trademark audits. He regularly advises clients on trade dress protection issues and internet-related trademark issues, including online-infringement and domain name disputes.

Terry represents the firm as a delegate to Mackrell International, an international network of independent law firms with members in 60 countries. He also serves as the Firm's representative member of the International Trademark Association (INTA).

ABOUT ROETZEL

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