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Top Ten Copyright Myths

In the course of advising clients about copyright law, I have come across many myths about the law of copyrights. These myths are accepted as true by many, and clients are often astonished when I dispel the myths. Business owners, owners of copyrights and those that use the copyrights of others without permission rely on these myths, often to their detriment. This article is designed to provide the reader with a very quick overview of the ‘Top Ten Myths about Copyrights’. If you believe any of these myths, you may want to consult counsel in order to more fully understand the law of copyrights and how copyright law may affect your business.

Ten: In order to have a valid copyright, the copyrighted work must have a © and the legend: Copyrighted 2007: FALSE. A copyright is created automatically upon the creation of the work. I often say that the easiest way to think about copyright creation is that there is an invisible ‘copyright fairy’ and when the thought becomes a tangible expression, a copyright is automatically created. Therefore, by way of example, a copyright was created as soon as I wrote the first draft of this article in my original, tangible, medium of expression. It is not necessary, in order to receive copyright protection, for me as the author to place a © with a legend anywhere on this article. You will note that I have chosen to place the © and the legend at the end of this article however. Why? I have done so to provide notice to the world that this work is copyrighted and when it was created. This provides me ADDITIONAL protections should anyone decide to infringe my work; but it is not necessary to the creation of a copyright in my work.

Nine: If I attribute the author of a work, I can freely copy the work without violating copyright: FALSE. The easiest example of infringers using the copyrighted work of others in this context is when someone copies a newspaper article and types on the copy a legend: “Reprinted from the Pittsburgh Post-Gazette”. In order to copy another’s copyrighted work, the person seeking to copy the work must have the written permission of the author or owner of the work. In this example, if written permission from the newspaper was sought and received, a copy of the newspaper article could be made and distributed according to the limits of distribution agreed to by the newspaper.

Eight: I can copy from books, newspapers and magazines and not violate the copyright laws pursuant to the “fair use” doctrine: PROBABLY FALSE. The fair use doctrine is a complex and evolving doctrine that allows for the limited copying of copyrighted works without permission from the author or owner of the copyright for some purposes including, among others, research, education, preservation, and certain exceptions pertaining to libraries. The analysis of whether a use falls under the “fair use” is very fact specific, but as a general guideline: if the copying is for pecuniary purposes, then the fair use doctrine is not applicable. For example, if you are giving a presentation to a potential client and in your presentation/Power Point, you have copied an article from a magazine about your industry, this is a violation of copyright because the copying was not principally for one of the limited fair use purposes, but rather for financial gain.

Seven: My office receives a trade journal which is very expensive. Instead of buying 50 subscriptions for each of the employees in my company who need to read the journal, we make 50 copies. Since we buy one copy/subscription, this is not a violation of copyright law: FALSE. There are reported cases in which the publishers of trade journals and subscriptions have successfully sued organizations who engage in this form of copyright infringement. This is a clear violation. Many journals provide sliding subscription rates for numerous users in order to avoid these situations.

Six: I am entitled to statutory fees if someone violates my copyright although I did not register my copyright with the United States Copyright Office: FALSE. Once an original work is reduced to a tangible medium of expression, a copyright is created. However, until that copyright is REGISTERED with the United States Copyright office, the owner of the copyright is not entitled to various statutory protections and rights such as statutory fees for an infringement ranging from \$750 to \$150,000 per infringement, attorneys fees, costs of prosecution, and punitive damages. Therefore, it is very important for owners of valuable copyrightable information to REGISTER their copyrights.

Five: I can copy and use information and photographs I obtain from the Internet/world wide web because it is in the public domain: FALSE. The fact that authors, creators, photographers and others have placed their copyrighted material onto the Internet or it has been placed on the Internet by others, does not diminish or absolve the copyright protections of the owner. In fact, some may argue that the Internet has increased the frequency of claims for copyright infringement because illegal copiers are falsely lured into the belief that they may legally copy information they obtain from the Internet. The placement of said material on the Internet in no way interferes with the lawful copyright the owner/author of said material retains. Therefore, prior to use of any Internet materials permission must be sought or a license for use obtained from the owner of the copyright.

Four: I can copyright an IDEA. FALSE. Ideas are not copyrightable. A copyright is created when an idea is turned into a tangible expression.

Three: If someone else wrongfully copies copyrighted material, and I just use it, I have not violated copyright law: FALSE. In copyright law, you can be found to be a copyright infringer if you contribute to violating copyright law or are found to be vicariously liable.

Two: I cannot be found to have wrongfully infringed someone's copyrighted work because I did not know it was copyrighted and it did not contain a ©copyright symbol. FALSE. In copyright law, there is no requirement that the infringer INTENDED to violate another's copyright. In fact, a person can be found liable for copyright infringement even if he truly did not know the work he was copying was another's copyrighted work. If there is copying or use of another's copyrighted work, there is copyright infringement and damages.

One: In order to obtain a copyright, I must create something UNIQUE or totally different from any other copyrighted work. FALSE: In order to obtain a copyright, the work created must be ORIGINAL. That means that the creator independently created the tangible expression from his/her mind. This concept, although straightforward, can become enormously complex. People's minds are filled with all that they have experienced and learned. I have attended law school, read many articles and books on copyright and have gained my knowledge about copyright from those prior texts. Therefore, can this article about copyrights be copyrightable and therefore copyrighted? Yes. This Article is not UNIQUE, but it is ORIGINAL. I did not use or refer to any other text or materials to 'copy' material, words, phrases or sentences for this Article. I sat down at the computer and wrote this. Therefore, this Article is copyrightable, even though its 'worth' economically, intellectually or otherwise is debatable!

In conclusion, while practicing copyright law I have been confronted over and over again with people's misconceptions and misunderstandings about copyright law. Often, they have made rather important business decisions based on their flawed knowledge of copyright law. Before you base an important business decision on what you BELIEVE to be the law on copyrights, please check with competent counsel.

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