

Is your Art Copyrighted?

RCP advises all artists to file for copyright protection on their art. There is absolutely no substitution for this protection. Copyright protection is your proof of ownership of your intellectual property. With a copyright, your legal counsel can sue any party that infringes on your copyright and, usually, collect your legal cost and damages. With a copyright in place, you can safely license your art and/or transfer ownership to another individual or entity. For additional reasons why you should file for a copyright, read RCP's "Copyright Advice" below.

Effective 12-15-2014, RCP will offer to file for copyright protection, on your behalf, for your art. For a flat fee of \$145, RCP will perform the task of electronic filing for your copyright. Prior, the client must provide important information about themselves and their art, such as name and address. This information can be provided over the telephone or in person. Upon receipt of the fee and information, RCP will create the electronic filing. The flat fee covers the creation of the filing, all fees paid to the government and the creation of the required digital files of your art, in addition to the filing of the same with the copyright office. Copyright registration proof from the government can take as long as 4-6 months to process, but will be sent directly to your home. However, the client can view the copyright online immediately after RCP completes the filing.

RCP Copyright Advice

RCP is sometimes asked, "How do I know that you will not copy my art or make it available to others without my knowledge or consent?" I love this question because it illustrates that the artist understands the value of their art!

So what is RCP's reply?

As artists, we understand the value and importance of intellectual property (IP). As a business, we also need to make a living by providing services to artists. How long would we be in business if we stole someone's IP or allowed a third party to steal it? In the art business, a sterling reputation is difficult to establish. The reputation of RCP is a valuable business asset and we will not take it for granted. In fact, we would simply never steal anything from anyone!

When an artist pays us to scan their art, they are provided with a copy of the digital scan file. That file establishes the owner of the art, the date of scan, who scanned it, etc. This provides proof that the artist owns that file. RCP imbeds this data in the metadata, which is part of the image file. However, this is NOT a copyright!

There are several strong reasons to file a copyright for your art. If you think that (a) your art has value, (b) you want the best possible protection, (c) you want to show the art to potential buyers without the worry of having it stolen, (d) you may wish to license the image in the future or (e) you want to assure the art value is protected for your portfolio, then you should consider filing for copyright protection.

The act of filing for a copyright is a service that RCP provides. Many artists are too busy or overwhelmed by the process to do this for themselves. RCP has mastered the task and offers to do this for an affordable flat fee. Just one more reason why you should let RCP do your scanning and reproduction prints!

The task starts with the artist filling out a form with his or her name, address and other legal information. This information is part of the record of IP ownership (a copyright). The filing will be prepared by RCP for you, but there will be no mention of RCP on the actual registration. As soon as RCP files for the copyright, the artist can search for the registration and see it on the government website. Keep in mind that it may take several months before the artist receives the copyright official record.

On behalf of the artist, RCP will file the paperwork required, set up payment for the government fee and file the appropriate digital files of the art. Complete payment is required by RCP before this process is started. Typically, RCP can finish this task within three days. The artist will receive a link to the filing that they can see as soon as it is filed by RCP.

We encourage all artists to copyright all of their art. If you feel like completing this process with RCP is not for you, we still encourage you to file for a copyright yourself. It is important to protect your valuable intellectual property!

Copyright Questions and Answers for Artists

By Sarah Feingold, Esq.

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Q: What does a copyright registration entitle me to?

A: Copyright registration provides the best evidence of a valid copyright, establishes a public record, and enables you to take legal action against copyright infringement. It does not provide absolute protection from infringement, nor does it guarantee fame and fortune.

Q: Copyright protection is automatic once a work is “fixed” (completed), so why register with the United States Copyright Office?

A: You receive a Certificate of Registration that establishes a public record that is the single best evidence of a valid copyright. It also allows you to take legal action against copyright infringement. If you register within three months of publication and before someone infringes on your work, you have a better chance of collecting certain damages and attorney’s fees in court. If registration occurs within five years of publication, this is also considered excellent evidence in a court of law. Copyright registration is also beneficial for licensing purposes.

Q: What is a “poor man’s copyright?”

A: A poor man’s copyright is the practice of mailing a copy of your work to yourself and not opening the envelope when you receive it. There is no provision in the copyright law or the practices of the Copyright Office regarding any type of protection known as the “poor man’s copyright.” Many people believe that this is an affordable alternative to copyright registration, but it isn’t. It can be easily faked and I have yet to hear of a “poor man’s copyright” success story.



Q: How do I obtain an international copyright?

A: There is no such thing as an international copyright. However, due to certain agreements like the Berne Convention and the Universal Copyright Convention, many, but not all, countries honor United States copyrights. For questions concerning a specific country, consult an expert in foreign copyright law.

Q: What do I do if I think someone has infringed on my copyright?

A: As the holder of the copyright, it is your duty to police your work. If you find someone has violated one of your exclusive rights, you decide how to proceed. If you believe that your copyright has been infringed on, you anticipate a legal dispute, and you don't have a US copyright registration on the works, get one. A Certificate of Registration (or a rejection of an application for copyright) is a prerequisite for US authors, including artists, who want to sue for copyright infringement in federal district court.

Before taking legal action, you can explain the problem to the other party and ask them to enter into a licensing agreement. Or you could politely ask them to stop. You could also choose to ignore the issue all together. In any case, you may want to consult an attorney. Keep in mind that ideas are generally free to be copied, though the line that divides ideas from expression can be difficult to define. Copyright does not protect facts, processes, utilitarian aspects of a design or simple shapes. Also, copyright protection does not preclude another author from creating independently authored, yet identical, works.

Q: If I put my work online, can someone steal it?

A: Posting your work online may make you feel like you're encouraging copying, but the benefits are that the resulting Internet traffic may be great for exposure or sales. Many people will of course see your work, and though you may feel like the exposure may lead to copying, you have to reconcile that with the upside potential. The alternative and only sure way to ensure no one will ever be influenced by your artwork or tempted to copy it is to either never create any artwork at all or if you do create, to never show it in public-- neither of which make a whole lot of sense.



Another very good reason for filing a copyright is that sooner or later every artist is told by a buyer, "I want to own all rights to your painting." When this happens you will want to prove that you are the artist of the work and that it is copyrighted. The fact that you have a copyright, allows you to (officially) transfer those rights to the buyer. What is most important to the artist, is that this generally means a significantly higher price for their art! Additionally, if you have a copyright, you may transfer the copyright to an organization in the future (such as a family trust, charity or similar).

You can also register an "additional claimant" with your original copyright. This allows you to be the "author / claimant" but allows you to also list a company name, "doing business as" or similar.

Why should you register your copyrights?

by Linda Joy Kattwinkle, ESQ. First published in STEP Inside Design, July/August 2007.

Even though you have copyright ownership as soon as you create your work, under U.S. law you have no rights to enforce your copyright until you register. Generally you must have filed for copyright registration before the infringement occurs in order to have the full scope of copyright protection (the exception is if you filed within three months of the first publication of your work; in that case, you have full protection even if the infringement occurs earlier). Full protection for such early registration gives you two important remedies: the right to recover your attorneys' fees when you win the lawsuit, and the right to an award of statutory damages. Statutory damages means a jury can award you an amount of money even if you cannot prove the infringement caused you a specific monetary loss. (Currently, the law sets a minimum of \$750 and a maximum of \$150,000 in statutory damages for willful infringement.)

Many artists know that they cannot afford litigation, so they believe these advantages of early registration are not relevant. However, in most cases it is the possibility of a lawsuit, rather than actual litigation, that gives you the bargaining power to stop an infringement, and often, obtain a monetary settlement. When defendants receive a letter raising an infringement claim, their first step is to determine whether you have a copyright registration that predates the infringement. If you do, they know that you are entitled to sue them for statutory damages and recover your attorney's fees. Your registration enhances their risk of both defending a lawsuit and incurring monetary damages, so they are motivated to settle. On the other hand, if they learn that you don't have an early registration, most infringers assume that you will not be able to sue them, and they will be less inclined to negotiate in good faith for a reasonable settlement.

There is no substitute for early registration. (Contrary to a popular myth, there is no "poor man's copyright"—putting a copy of your work in an envelope and mailing it back to yourself will not provide any legal protection.) The best practice is to register any work that will be seen by the public or potential clients, including your portfolio and websites. Unauthorized copying is temptingly easy, and infringements are common. Early registration is the best proactive step you can take to ensure that you will have the full power to react in the unfortunate event that your work is infringed.



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