

Copyright Basics for Startups and Entrepreneurs

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In most cases, the value of an early-stage business is based primarily on its intellectual property, such as its rights in inventions, literary and artistic works, and the symbols, images, and names used to identify the business to its prospective customers. Though many entrepreneurs and startups immediately think of seeking patent protection for their ideas, the other two forms of intellectual property protection, copyright and trademark, provide valuable protections that should not be ignored.

The form of intellectual property protection easiest for many entrepreneurs and startups to understand is copyright protection, which applies to many writings, images, and videos. In an age in which many startups commercially exploit digital content, whether as a core product ancillary to the development of an online community, startups and their principals should be well-versed in at least the basics of copyright protection.

What is protected by U.S. copyright law?

In the United States, Section 102(a) of the Copyright Act extends copyright protection to “original works of authorship fixed in any tangible medium of expression.”

To be protectable, a work must be:

- Original, that is, it must be independently created and not copied from another work, though it may closely resemble a preexisting work;
- A “work of authorship” such as a literary work; musical work (including any accompanying words or lyrics); dramatic work (including any accompanying music); picture, graphic, or sculpture; motion picture; or sound recording; and
- Fixed in a “tangible medium,” that is, it must be embodied in a copy that is sufficiently permanent to permit it to be perceived, reproduced, or otherwise communicated in more than a transitory way.

So, copyright law protects this article and all original literary works, music, songs, photos, drawings, movies, and websites.

What is not protected?

Copyright law protects the expression of an idea, not the idea itself. Section 102(b) of the Copyright Act clearly provides that “[i]n no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.” There may be other forms of intellectual property protection available to underlying ideas, but the coverage of copyright protection is limited to the manifestation of the idea in a tangible medium.

What can the owner do with a copyright?

The Copyright Act reserves six rights exclusively to the owner of the copyright in a work:

- The right to reproduce the copyrighted work;
- The right to prepare derivative works based upon the copyrighted work;
- The right to distribute copies of the copyrighted work to the public;
- Where applicable, the right to perform the copyrighted work publicly;
- Where applicable, the right to display the copyrighted work publicly; and
- Where applicable, the right to perform the copyrighted work publicly by means of a digital audio transmission.

With few exceptions, only the owner of a copyrighted work may legally exercise any of these rights with respect to a copyrighted work. The unauthorized exercise of any of these rights by anyone other than the copyright owner usually constitutes copyright infringement.

What is “fair use”?

Generally, the unauthorized reproduction of a copyrighted work is unlawful. However, Section 107 of the Copyright Act carves out an exception for unauthorized reproduction of copyright works where such copies are created for purposes of “criticism, comment, news reporting, teaching, scholarship, or research.” To determine whether the reproduction of a copyrighted work constitutes permissible “fair use” (as opposed to an impermissible infringement of the rights of the copyright owners), the Copyright Act provides a nonexclusive list of factors for a court to consider, including:

- The purpose and character of the use, including whether the use is for commercial vs. non-profit educational purposes;
- The nature of the copyrighted work;
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- The effect of the use upon the potential market for or value of the copyrighted work.

The “fair use” exception is designed to permit fairly inconsequential and non-commercial reproductions of copyrighted works where the market for the original work is not affected while protecting the exclusive right of the copyright owner to commercially exploit his or her creation.

By enforcing its rights in copyrights, and respecting the copyrights of others, a startup may avoid enterprise-killing losses and litigation. Accordingly, it is important for the principals of a startup to have at least a basic familiarity with copyright concepts.

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