

Ask a Lawyer
Ask a Question

Today's Q&A

Question & Answer Archive

Topic Schedule

Research Areas of Law

Bankruptcy

Family Law

Labor and Employment Law

Personal Injury

Real Estate

Related Links

Articles:

- [Do I Really Need a Lawyer?](#)
- [Selecting a Lawyer](#)
- [Lawyers' & Clients' Responsibilities to Each Other](#)

Ask a Lawyer > Question & Answer Archive

Ask a Lawyer Archive



Can The Listing Of Items In An Auction Be Copyrighted?

[Kristie Prinz](#)

Q. I sell items on the auction site eBay. I have recently been contacted by a competitor's lawyer stating that I am infringing upon his client's "copyright" in the auction. They are claiming copyright in the EBAY listing itself, first saying I could not use the same colors or fonts, and now saying that I cannot use the same so-called "format". The format is essentially to place a group of items on a table and then list the items in the auction. Can a listing like this on EBAY be copyrighted? The "work," i.e. the auction listing, is only visible for sixty (60) days.

-- *Tabitha B.*

A.

You raise an interesting question.

[Copyright](#) protects "original works of authorship" that are fixed in a tangible form of expression. Copyrighted works can include the following categories:

- Literary works
- Musical works
- Dramatic works
- pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audio/visual works
- Sound recordings
- Architectural works

In the case of an EBAY listing, several questions come to mind.

First, is there really enough originality in the expression of the listing to be protectable under copyright law? EBAY provides certain options for listings, and sellers can select from those options. Are those choices in

Browse for a Lawyer

- [Find Lawyers & Law Firms by State or Province](#)
- [Find Lawyers & Law Firms by Area of Law](#)

Find a Lawyer

Type in an area of law or a lawyer/firm name:

City:

State:

Country:

[Advanced Search](#)

[Search Help](#)

themselves original enough to be protectable? It is difficult to believe that making choices from pre-selected options would contain enough originality to be protectable. On the other hand, it is feasible that the description of an item to be sold on EBAY may have enough originality to be protectable under copyright law, since the choice of words to describe the item may contain original expression. Likewise, the arrangement of items in a photograph added to an EBAY listing may have enough originality to be protectable. Having said this, it is unclear that all descriptions and photographs posted to EBAY contain original expression protectable under copyright law. This is most likely not the case.

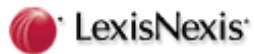
Second, are the listings on EBAY really fixed in a tangible form of expression? Do temporary listings exist long enough to meet this standard? This is also unclear in the current set of facts. What constitutes a long enough time of posting to meet the standard?

As you can see, your question raises a number of issues, which may or may not have definitive answers at this point in time. Given the level of uncertainty, I am a bit surprised that an attorney has contacted you regarding this issue, but at this point, he has only contacted you and has not escalated the matter further.

In light of these facts, your best course of action right now would probably be to speak with a local copyright attorney about the specific facts of your listing and also the published case law, particularly the published case law in your jurisdiction. I have not personally researched the published court decisions to see if there have been published decisions, which address any of these issues, but it would be prudent for you to know and understand what the current status of the law is on this issue. After you understand what has been decided to date on this issue, you will be in a position to use that information to make a definitive decision on how to best proceed and respond.

-- *Kristie Prinz*

[Find a Lawyer](#) | [Research Legal Information](#) | [Ask a Lawyer](#) | [Blogs](#) | [Contact Lawyers at attorneys.com](#) | [Community](#)



LexisNexis Martindale-Hubbell is the most complete, trusted source for identifying qualified legal counsel.

Disclaimer: The information provided on Lawyers.com is not legal advice, Lawyers.com is not a lawyer referral service, and no attorney-client or confidential relationship is or should be formed by use of the site. The attorney listings on Lawyers.com are paid attorney advertisements and do not in any way constitute a referral or endorsement by Lawyers.com or any approved or authorized lawyer referral service. Your access to and use of this site is subject to additional [Terms and Conditions](#).

[Martindale.com](#) | [Canada](#) | [attorneys.com](#) | [LawyerLocator.co.uk](#) | [www.findalawyer.cn](#) (China) | [www.law24.co.za](#) (South Africa) |
[www.martindale.jp](#) (Japan) | [anwalt24.de](#) (German) | [martindale.co.il](#) (Israel) | [Lexis Nexis](#) | [lexisONE Free Case Law](#)

[Help](#) | [Site Map](#) | [About Us](#) | [Press Room](#) | [Info for Lawyers](#) | [Contact Us](#) | [Home](#) | [Index Map](#)

©2008 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.