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What Is The Process For Copyright And Trademark Registration?

[Kristie Prinz](#)**Q.**

How can you protect your copyright and trademark at the Intellectual Property Office? What is the process?

-- *Anonymous*

A.

In fact, the United States has not one but two different offices to protect intellectual property: the Copyright Office and the Patent and Trademark Office ("USPTO").

Contrary to what most people think, copyright registration is not required to protect an original work of authorship. Copyright protection actually subsists from the moment an original work of authorship exists in a fixed form.

So, given this fact, you may wonder: why is there a Copyright Office and what is the point of registering a work?

Well, the primary function of a copyright registration is to provide a public record of ownership, and the Copyright Office is the government office that provides this public function. Also, copyright registration is a prerequisite to filing a copyright infringement complaint against an infringer.

In addition, copyright registration provides certain "perks" to copyright owners, including as follows:

1. If made before or within 5 years of publication, registration will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate;
2. If registration is made within 3 months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions, instead of only actual damages and profits; and

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3. Registration allows the owner of the copyright to record the registration with the U. S. Customs Service for protection against the importation of infringing copies.

Thus, copyright registration can be beneficial to a copyright owner but is not required to protect an original work.

The process for filing a registration is fairly simple. You have to fill out the appropriate form(s), pay the necessary fee, and submit the necessary deposit of the work. The forms are available on the Copyright website at www.copyright.gov, and the site also explains the fees and deposits that are required. While filing the registration does not require the assistance of an attorney, it is a good idea to work with an attorney on the filings, since the attorney will be in a position to make sure that your filing or filings are done correctly and can also work with you on ensuring that you have a clean chain of ownership of rights in your work, which is a common problem I see with many copyrighted works that can and often does come back to haunt owners down the road.

With respect to trademarks, they can actually be protected at both the state and federal level, but it is generally a good idea to register your trademark at the federal level and also to run trademark searches on a potential mark to make certain it will not infringe another party's mark.

What is the process for filing a trademark registration? Well, as in the case of copyright registrations, trademark registrations do not require the assistance of an attorney, but it is generally a good idea to retain an attorney, since that attorney is going to be in a position to make certain that you do the filing correctly and also run searches to make certain your trademark does not infringe a third party's trademark. The trademark application process is actually automated and can be accessed through the USPTO website at www.uspto.gov. The USPTO website is designed to provide enough information to walk a layperson through the process, so it is likely that the average person could register a trademark without the help of an attorney if he or she chooses to do so.

-- Kristie Prinz

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