

Bennett

LAW OFFICE

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*The Bennett Law Office
counsels clients in the
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HOW DO I PROTECT MY SONGS?

Songwriters often come to me with the fear that their songs will be stolen if they perform them for friends, family, potential co-writers or shop them to music publishers. I believe song “stealing” is not rampant, but does exist. The concern of someone stealing your song is only one reason why you should understand how your compositions are protected by the U.S. Copyright Law. Songs written since January 1, 1978 are protected under the Copyright Act of 1976.

What does the Copyright Act protect? The Copyright Act protects original works. It does not protect ideas. If I gave a group of twenty songwriters an exercise to write a song including “rain,” “trains,” “trucks,” “drinking” and “mama,” they would all start from the same idea, but express their idea in different manners. Each work would be original and be protected under the Copyright Act.

What protection does the Copyright Act grant you? A simplistic answer is that the owner of the copyright has the ability to license her work and to stop others from infringing her work.

What do you have to do to secure protection under the Copyright Act? This is much simpler than you ever imagined. You have to “fix your work in a tangible means of expression.” In non-legal ease this means you have to take the song from an idea in your head and write it down or record the song. Your song is not protected under the Copyright Act until it is fixed.

I like to compare the move from expression to idea to the concept of “Ordering Lunch.” When you go to a restaurant you look at the menu, you might discuss the menu with your lunch companion, you may even decide on the tacos and then when the server asks for your order you change your mind and order enchiladas. When the server wrote down your order, your idea of what you wanted for lunch was expressed on the server’s order pad. If you were co-writing a song, you might take out a notepad and look at some ideas or phrases you jotted down and discuss those ideas with your co-writer. When you write out the lyrics and music, or sing the song into a boom box, you have “fixed the expression” of your ideas, just as the food server fixed your lunch order on her notepad.

Do I have to file a Copyright Application to protect my song? The answer to this question is no ... But, to receive the most protection available under the Copyright Act, you should file a Copyright Application. As discussed above, your composition is protected as soon as you “fix it in a tangible means of expression.” Even though filing a Copyright Application is not required, you should register your composition with the Copyright Office. The Copyright Registration is the best evidence to submit to a court of law if your work is ever involved in an infringement action. If you file a copyright application within five years of the publication of the work, the court will presume the information on the registration is true. This includes the date of creation and/or publication and the authors of the work listed on the registration.

MAILING YOUR COMPOSITION TO YOURSELF AND NOT OPENING THE ENVELOPE IS NOT AN ADEQUATE MEANS OF PROTECTION. Filing a Copyright Application is the very best means of proof as to the ownership and date of creation of a composition.

Prior to suing someone for copyright infringement, you must have a copyright registration for your work. Also, additional damages may be available to you if a copyright registration has been filed.

Do I need to include the copyright symbol © on my lyric sheets or compact disc to be protected? Again the answer is no . . . But, you should always include a copyright notice on each copy of your work. The copyright notice should include either the word “copyright” or the symbol “©,” the year of first publication of the work, and the name of the copyright claimant. Because I am the author of this article, an example of an acceptable copyright notice for this article is “© 2001 Tamera H. Bennett.” By including the copyright notice, you put the world on notice that you are claiming ownership in the work.

How long is my work protected by the Copyright Act? In general, the protection for a work created after January 1, 1978 is life of the author plus 70 years. If there are co-authors, the term lasts until 70 years after the death of the last surviving author.

**REMEMBER, IF YOU
CREATE
PROTECT**TM

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In The News And At The Courthouse

HOT TAMALES!

Tabasco, a Marion, Iowa restaurant is being sued by the Tabasco brand hot sauce manufacturer for trademark infringement. The suit demands that the restaurant change it's name and destroy all promotional materials. The restaurant claims that it is named after a state in southeastern Mexico.

MILLION DOLLAR FACE

A Los Angeles County Superior Court jury ordered Nestle USA to pay \$15.6 million to model Russell Christoff for using his photograph without his permission to advertise Taster's Choice. Christoff posed for the freeze-dried coffee brand in 1986. While shopping in 2002, he recognized his face on the coffee's label.

NEW COPYRIGHT FORMAT

On February 14, 2005, the United States Copyright Office changed the format of certain copyright registrations as part of a pilot project to test reengineered business processes.

Certificates in the new format will be issued only for audiovisual works registered on Form PA and the Certificate of Registration will no longer be a reproduction of the paper application form. Full implementation of the new system is scheduled for Fall 2006.

For more information on this change and how it will effect you, please contact our office at 972-436-8141.

FARM TO MARKET MUSICSM

Please visit www.farntomarketmusic.com to see how Farm To Market Music can assist you in music clearance and licensing matters.