

## COPYRIGHT PROTECTION

This article will outline the steps an engineer may take to protect his or her original works under the United States copyright laws, and if necessary, to enforce the copyright.

Copyright protection is granted to "original works of authorship fixed in any tangible medium of expression", including pictorial, graphic, sculptural, and architectural works. 17 U.S.C. § 102(a)(5),(8). The owner of a copyright has the exclusive rights to do and to authorize any of the following: (1) to reproduce the copyrighted work in copies, (2) to prepare derivative works based upon the copyrighted work, (3) to distribute copies of the copyrighted work to the public by sale or other transfer of ownership, and (4) to display the copyrighted work publicly. 17 U.S.C. § 106(1-3), (5).

Copyright initially vests in the author or authors of the work. 17 U.S.C. § 201(a). In the case of a "work made for hire," which is work prepared by an employee within the scope of his or her employment, the employer or other person for whom the work was prepared is considered the author, unless the parties have expressly agreed otherwise in a written instrument. 17 U.S.C. § 101, 17 U.S.C. § 201(b).

For works created on or after January 1, 1978, the copyright subsists from its creation and endures for a term consisting of the life of the author and 70 years after the author's death. 17 U.S.C. § 302(a). In the case of a work made for hire, the copyright endures for a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation, whichever expires first. 17 U.S.C. § 302©).

When a work is protected under the copyright laws, a notice of copyright may be placed on publicly distributed copies from which the work can be visually perceived. 17 U.S.C. § 401(a). The form of notice shall include three elements: (1) the symbol ©, or the word "copyright", or the abbreviation "copr."; and (2) the year of first publication of the work, and (3) the name of the owner of copyright in the work or an abbreviation by which the name of the owner can be recognized. If a notice of copyright appears on a published copy to which a defendant in a copyright infringement suit had access, no weight shall be given to a defendant's defense based on innocent infringement in mitigation of actual or statutory damages. 17 U.S.C. § 401(d).

Technical drawings and other types of original works prepared in the design process will be registered by submitting a form VA issued by the United States Copyright Office. This form will seek information including the following: the name and the address of the copyright claimant, the title of the work and the nature of the work, a statement identifying whether the work was made for hire, the year in which the work was created and the date of first publication if published to the general public, and a statement identifying whether this work was the subject of any previous copyright registration. A copy of the work being registered will also need to be submitted. The filing fee will vary depending on the nature of the work being registered. Drawings, for example, require a registration of \$30.00. The United States Copyright Office will return a certificate of registration within six to nine months following receipt of the registration. However, the effective date of registration will typically revert back to the original date on which the application was received by the copyright office.

Copyright registration is imperative because an infringement action cannot be instituted until the copyright has been registered with the United States Copyright Office. 17 U.S.C. § 411(a). In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration made thereafter shall be within the discretion of the court. 17 U.S.C. § 410©)

The remedies available to a copyright holder are substantial. A Court may grant a temporary and final injunction "on such terms as it may deem reasonable to prevent or restrain infringement of a copyright." 17 U.S.C. § 502(a). A copyright infringer is also liable for damages. A copyright holder can seek recovery of the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. 17 U.S.C. § 504(b). Alternatively, the copyright holder can seek statutory damages of "not less than

\$750.00 or more than \$30,000.00 as the Court considers just". 17 U.S.C. § 504(c)(1). Where the Court finds that infringement was committed willfully, the Court may in its discretion increase the award of statutory damages to a sum of not more than \$150,000.00. 17 U.S.C. § 504(c)(2). Where the Court finds that an infringer was not aware and had no reason to believe that his or her acts constituted a copyright infringement, the Court may reduce the award of statutory damages to a sum of not less than \$200.00. *Id.* In addition, the Court in its discretion may allow the recovery of full costs and an award of a reasonable attorney's fee to the prevailing party as part of the costs. 17 U.S.C. § 505.

Copyright owners should be aware that no civil action may be maintained under the copyright laws "unless it is commenced within three years after the claim accrued." 17 U.S.C. § 507(b).

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