

High Tech Counsel Corner

Are you registering your proprietary computer software with the U.S. Copyright Office? If not, will that make a difference in your software rights?

Federal copyright law provides protection (i.e., the exclusive right to reproduce, create derivative works of, and distribute copies of copyrighted material) for original works of authorship, including software.

Copyright protection extends to expression, which for software may include source code, object code, and screen displays, as well as documentation. However, copyright does not protect the ideas, program logic, algorithms, systems, methods, concepts, or layouts embodied in the software. The latter may be protectible as trade secrets, or by patents if they qualify as patentable inventions.

While a copyright notice is not required to be used in the U.S. and most other countries, doing so can be advantageous. For example, the use of a copyright notice lets third parties know that copyright protection is being claimed – thereby countering a possible defense by a third party that it innocently infringed.

Similarly, while a valid copyright does not require registration, a number of advantages under U.S. law can be obtained from copyright registration:

- Registration *is* required before an infringement lawsuit can be brought.
- Registration creates a public record, which may assist with transfers of the software with a company's sale or merger.
- So long as registration occurs within 5 years of publication, registration will establish *prima facie* evidence as to the validity of the copyright.
- So long as registration is made within 3 months after publication or prior to infringement, a copyright owner may recover statutory damages and attorney's fees in addition to actual damages (such as lost profits).
- A copyright registration can be recorded with the U.S. Customs Service to obtain protection against infringing copies being imported into the U.S.

When deciding how best to protect your proprietary computer software, we encourage you to seek advice from knowledgeable legal counsel about the advantages of copyright registration, the registration process, and other forms of intellectual property protection that may be available to you.



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