

Fine Print

A Quarterly Publication of the Ohio State Bar Association
and Our Members

Issue 6 • Winter 2001

MYTH: NOTICE OF COPYRIGHT REQUIRED

By Alan S. Wernick, Esq.

The other day, I came across a copyright notice on a builder's drawing of a house plan that the builder freely distributed in model homes.

Anyone could walk in off the street and pick up one of these drawings. The notice read "Unpublished Work 1990." However, since "publication" is, in fact, the distribution of copies of a work to the public, the drawing was, in a true sense, being "published."

By the time they begin to read, most people have seen a copyright notice. Most, however, misunderstand the meaning of the notice and its role and purpose in protecting copyrights.

It is a myth that a copyright notice is required for a copyright in a work to exist. The myth does have some basis in history. In the past, according to United States law, the copyright notice was required for creating and maintaining copyrights... with some exceptions.

Since March 1, 1989, however, even if a work does not have a copyright notice on it, copyrights can exist and be enforced, with a few exceptions. Under copyright law in the United States today, including a copyright notice on a

work is entirely optional. The copyright owner does not even have to include a copyright notice on publicly-distributed copies of a work. For example, a newspaper publisher does not have to include a copyright notice in the newspaper to assert a valid copyright.

Although the copyright notice is no longer necessary, it can be advantageous to the copyright owner to use it. For example, if a copyright infringement suit is brought on a work distributed with a copyright notice, it will be easier to assert damages against the purported infringer. In other words, it will be harder for the alleged infringer to claim he or

she was an "innocent infringer" and did not know the work was copyrighted. Thus, the copyright owner likely will be entitled to a greater amount if the court determines there has been an infringement and makes the defendant pay damages. And, if the U.S. copyright owner has registered the work in a timely manner with the U.S. Copyright Office, there is a potential for even greater damages against the infringer.

Alan S. Wernick is an OSBA member and partner in the Chicago office of the law firm of McBride Baker & Coles. ©2001 Alan S. Wernick, Chicago, IL. Reprinted by the OSBA with permission.

HOW TO PROVIDE A PROPER COPYRIGHT NOTICE

By Alan S. Wernick, Esq.

While a copyright notice is not required for a copyright to exist, if you are going to use it, you might as well do it right. Federal law sets forth the proper elements of a copyright notice.

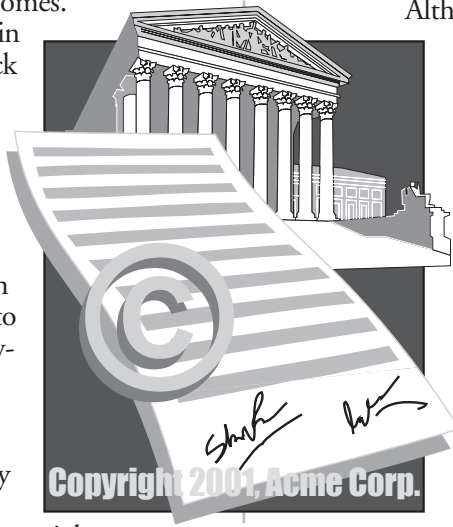
The general form of the copyright notice is set forth in the Federal copyright statute (17 U.S.C. §401). There are three parts to the copyright notice under this law:

- The first part has three options: the "©" symbol (the letter "C" in a circle), the abbreviation "Copr.," or the word "Copyright." (In the case of a sound recording, the letter "P" in a circle is used instead.)
- The second part of the notice is the year of first publication of the work.
- The third part of the notice is the name of the copyright owner or some abbreviation by which the name can be recognized... or some generally-known alternative designation of the owner (e.g., "IBM").

The year of first publication may be omitted when a pictorial, graphic or sculptural work, with accompanying text matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful articles.

The positioning of the copyright notice on the work is important. A notice should be affixed to the copies of the work in such a manner and location as to give reasonable notice of the claim of copyright.

cont. on page 2



OSBA

For additional copies of **Fine Print**, or further information, please contact OSBA Public Relations, 1700 Lake Shore Drive, Columbus, Ohio 43216-6562, or by phone, 800/282-6556 and 614/487-2050. Articles appearing in this newsletter are intended to provide broad, general information about the law. Before applying this information to a specific legal problem, readers are urged to seek advice from an attorney.

Funding for Fine Print provided by the Ohio State Bar Foundation.

ATTORNEY FEES: WHAT YOU SHOULD KNOW

Q: I'm thinking about hiring an attorney to do some legal work for me, but I'm worried about the expense. Can I find out ahead of time how much it will cost?

A: Yes. You should ask your attorney about fees before asking him or her to represent you. In most instances, a written fee agreement spelling out information about payment of fees and expenses as well as billing procedures should be signed by both you and your attorney. This is especially important where the matter is complex or the

representation is for an ongoing matter. Such an agreement should set forth the specific legal services to be provided by the attorney and the amount of legal fees to be paid by you, the client, for those services. The fee agreement should also set forth how expenses, such as court filing fees, photocopying, telephone calls, investigators, etc., are to be paid. Before signing a fee agreement, you should read it carefully and ask questions about any provision you don't understand. You also should ask for an estimate of the total charges that will be billed, and ask for monthly billing statements and written receipts for all amounts paid to the attorney.

Q: How do attorneys charge for their services?

A: Attorneys may charge for their services in one of several ways. Most legal work is billed at an hourly rate. Attorneys generally keep daily billing logs to record the time they spend working on behalf of their clients.

Sometimes, attorneys may charge a flat fee for a particular service. This method of billing is generally chosen for short-term legal matters such as a real estate closing or a matter involving a specific service, such as preparation of a will.

In certain types of cases, a lawyer may work on a "contingent" fee. In this type of arrangement, the lawyer gets paid for his or her time only if the client is successful in recovering money

Before signing a fee agreement, you should read it carefully and ask questions about any provision you don't understand.

from a lawsuit. The payment, in this case, would be a percentage of the recovery. Your attorney would tell you ahead of time what that percentage would be. Contingent fee arrangements are made most often in cases where the client brings suit to recover for damages, such as personal injury caused by a negligent driver in a traffic accident. If the client is not successful in recovering any money, then the lawyer agrees not to take a fee for his or her services. However, the client may nonetheless be responsible for costs and expenses associated with prosecuting a case regardless of whether or not any money is recovered. A recent change to the attorneys' ethics rules allows

payment of costs and expenses to also be made payable "contingent" upon the recovery of money from the suit. This is, as noted before, a matter which should be clearly set forth in the fee agreement.

Q: I called an attorney, who said she was unable to tell me exactly what it would cost for her services. Why couldn't she?

A: Often lawyers are able to estimate how much time a particular legal matter will take to complete and, thus, are able to provide relatively accurate fee estimates. However, because each per-

son's legal situation is unique, what appears on the surface to be a simple legal matter may prove more complex and time-consuming once the work has begun. Therefore, often it may be difficult for an attorney who charges an hourly rate to tell you exactly how much the work will cost.

By the Ohio State Bar Association (OSBA), located in Columbus.

IN THE HOPPER

Pending state legislation which could affect small business:

House Bill 597, which deals with non-profit corporations, will become effective April 10, 2001. This bill modernizes Ohio's non-profit corporation law, changes the term "trustee" to "director," defines "mutual benefit" and "public benefit" corporations, and incorporates concepts from the Revised Model Nonprofit Corporation Act. For further information about this legislation and other legislation affecting small businesses, contact your trade association or the General Assembly Web site at www.state.oh.us/ohio.

From the OSBA Office of Government Relations.

justice
is hard work

COPYRIGHT NOTICE, cont. from page 1

Examples of possible copyright notice positions include:

- For a book: Copyright notice should be placed on the title page or the page immediately following, either side of the front or back cover, or the first or last page of the main body of the work.
- For computer programs: Copyright notice should be placed with or near the title or at the end of the work on paper printouts of the work, at the user's terminal at sign-on (and removed only after the user takes some action such as pressing a key or clicking on a mouse), on continuous display on the terminal, or reproduced durably on a gummed or other label securely fastened to the copies or to a container used as a permanent receptacle for the copies.

Proper placement of the copyright notice depends on the specific work. A proper copyright notice, along with proper registration of the work in a timely manner, can enhance the copyright owner's damages remedy in the event the work is infringed.

Alan S. Wernick is an OSBA member and partner in the Chicago office of the law firm of McBride Baker & Coles. ©2001 Alan S. Wernick, Chicago, IL. Reprinted by the OSBA with permission.