

What Experts Need to Know About Copyrights and Trademarks

My clients often ask me about copyrighting their work or registering a trademark to protect their brand. I've put this report together to answer some of the basic questions I'm frequently asked. This report does not serve as legal advice and you should always consult with an attorney to help with legal matters.

Here is a short video that explains the basic facts of trademarks, patents, and copyrights – <https://www.youtube.com/watch?v=4cIBcl7dD4w>

Here is an in-depth video that explains the basic facts of trademarks, patents, and copyrights – <https://www.youtube.com/watch?v=nXyCyWg6x98>

What is a Copyright?

Copyright falls under the auspices of intellectual property law and protects the rights of creators of original works of authorship whether the work in question is published or not. Original works of authorship include literary, dramatic, musical, and artistic works such as poetry, novels, movies, songs, computer software, and photography. By law, when something is written, drawn, photographed, etc., its copyright is automatically owned by the author. In other words, a copyright exists at the moment the work is created.

What is a Trademark?

A **trademark** is a word, phrase, symbol, and/or design that identifies and distinguishes the source of the goods of one party from those of others.



A **service mark** is a word, phrase, symbol, and/or design that identifies and distinguishes the source of a service rather than goods. Some examples include: brand names, slogans, and logos. The term "trademark" is often used in a general sense to refer to both trademarks and service marks.

Unlike patents and copyrights, trademarks do not expire after a set term of years. You can trademark many of the things that you use to distinguish your business from other businesses. You might have a trademark for:

- Your business name
- A product name
- Your logo or label
- A symbol or design
- A sound
- A product package

Each time you use your mark, it is best to use a designation with it. If registered with the USPTO, use the ® symbol after your mark. If not yet registered, you may use **TM** for goods or **SM** for services, to indicate that you have adopted this as a "common law" trademark or service mark.

Should I Register the Copyright to My Website?

Copyright violation is always illegal, but it can be difficult to prosecute offenders without copyright registration, which establishes a public record of ownership. In addition, owners of registered works may be eligible for statutory damages and attorney's fees in successful litigation against infringers.

All websites and their content are inherently copyrighted, provided they are original works. Whether you decide to complete copyright registration for your website is your choice. If the content of your website is valuable to you, financially or otherwise, or if you feel you need to protect your website and



its contents for legal reasons, then taking a few minutes to register the copyright to your website is probably worthwhile.

Should I Register the Copyright to My Book?

Copyrighting a book is easy to do, but the nature of the copyright protection is complex. An author owns the copyright to a book the moment it is written—before publishing the book or looking at copyright registration. To copyright a book completely, however, the author needs the added protection of federal registration.

The exact nature of the copyright depends on the nature of the book. A phonebook has very little, if any, copyrightable material. It is simply a list of facts. A romantic novel has a lot of copyrightable material. In addition to the pages of the book, copyright extends to the order of the plot, specific characters or elements of the broader world that it creates.

Should I Register my Trademark?

As previously noted, you have common law protection for your trademark when you put it in use as long as no one else is already using the trademark.

There are four reasons to register your trademark.

1. **First**, you put the public on notice that you claim the rights to this mark. In practical terms, this means that if someone else is not aware of your business, and they want to go into business with a mark similar to yours, selling the same or similar goods or services, they will likely be deterred from using your mark after finding it at the Trademark Office website.
2. **Second**, should you ever need to sue to prevent another's use of the mark, having a registration allows you to bring an action in federal court.
3. **Third**, if you have a registered mark you are more likely to obtain enhanced penalties against any counterfeiters who may use your mark (including treble [triple] damages and attorney's fees). Many in the apparel industry find this especially useful, since counterfeiting is rampant



and enhanced penalties mean that counterfeiters risk losing more than all their profits from infringing sales.

4. **Fourth**, having a registration on file gives greater credibility to your position that the trademark rights in your company are settled. This may be very valuable to you several years down the road should you choose to sell your company. Along similar lines, if you ever have the opportunity to offer your business in the form of a franchise, a registered trademark is invaluable. That is why many restaurants and other retail establishments are eager to register their marks.

Why Do I Need a Comprehensive Trademark Search?

Why do I need a comprehensive search? If you're currently using or planning to use a trademark, it's always a good idea to see if there are similar marks that could be confused with yours, or might affect your ability to register, use or protect your trademark. Similar marks don't have to be registered with the USPTO to affect your ability to use your trademark, making it important to conduct a comprehensive search that includes common law marks that are being used by businesses across the country. Our dedicated Comprehensive Search team leverages their experience to uncover potential federal and common law conflicts and set you up for success.

Why Do I Need an Attorney to Analyze my Trademark Search Results?

Why do I need an attorney to analyze my search results? Your search results can be hundreds of pages long, and determining whether a conflict exists requires a multi-factor analysis that isn't always straightforward. It can be vital to have an experienced trademark attorney carefully analyze your search results and advise you on the strength of your mark, to help guide your application and steer you clear of infringement lawsuits.

How Much Does It Cost to Register my Copyright and Secure my Trademark?

I recommend [LegalZoom.com](https://www.legalzoom.com) or [Trademarkia.com](https://www.trademarkia.com) for trademark and copyright registration.



The cost for copyright registration through [LegalZoom.com](https://www.legalzoom.com) is \$114 + \$35 for federal filing. If you don't want to use an agency, you may also register your copyright yourself with [Copyright.gov](https://www.copyright.gov).

The cost for trademark registration through [LegalZoom.com](https://www.legalzoom.com) is \$599 + \$35 for federal filing.

How Long Does it Take?

The copyright and trademark process can take 6-10 months to complete.

Sources:

1. <https://www.legalzoom.com/articles/do-i-need-to-copyright-my-website>
2. <https://www.copyright.gov/registration/index.html>
3. <https://www.legalzoom.com/business/intellectual-property/trademark-registration-overview-c.html>
4. <https://www.uspto.gov/trademarks-getting-started/trademark-basics/trademark-patent-or-copyright>
5. <http://www.sobodashlaw.com/2013/03/should-i-register-my-trademark/>

