

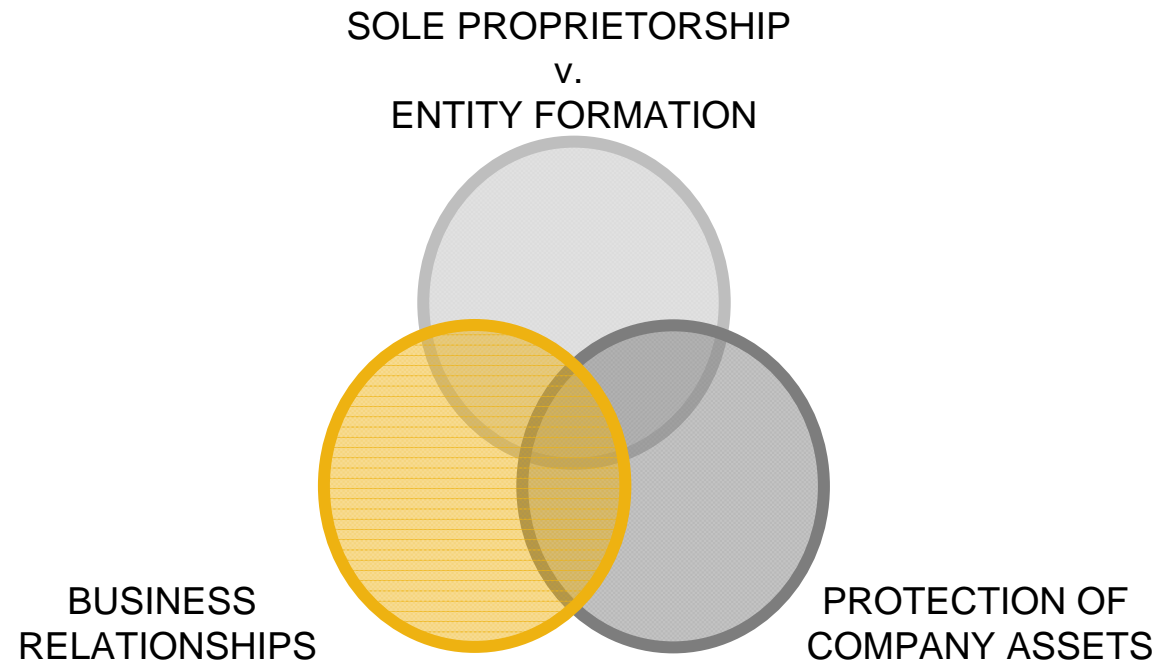


Jewelers Breakfast Meeting June 16, 2010

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3 CATEGORIES OF BUSINESS ISSUES

Faced by Jewelers and Creative Artisans



Sole Proprietorship v. Entity Formation

- Sole Proprietorship – doing business under another name, or as individual
 - Personal liability
 - Minimal formalities
 - State Trade Name Filing
 - Income to Business is Taxed as Individual Income

Sole Proprietorship v. Entity Formation

- **Corporation or Limited Liability Company***

Tax treatment and formalities can differ – should work with accountant and attorney to decide appropriate entity type for your business.

 - Limitation of personal liability
 - Keeps personal and business finances and obligations separate (more professional...)
 - Insurance may have to change
 - Attractive to investors and buyers of your business
 - EIN & Licensure in name of Company
- **Partnerships & Types of Limited Partnerships**
 - Not as popular

Protection of Company Assets: Assessment of Intangible Property Types

- Trademark – source identifier
 - Federal law that protects the company or product branding, as well as the consumer
 - Quality control can be used to prevent counterfeiting
- Copyright – protection of artistic works
 - Most jewelry can fall under this federal law
 - Major area of concern for jewelers – discussed further herein
- Trade Dress – the appearance of products
 - i.e. Tiffany’s jewelry box
- Patents – design patent can cover jewelry
 - New zipper, clasp, button
- Trade Secret – protects processes and information that is valuable to your business because it is secret
 - i.e. Unique process for engraving
- Contract – When other laws don’t cover something, rely on carefully drafted contract agreements.

Protection of Company Assets: Trademarks & Servicemarks

Key: Identify a specific product or service and distinguish it from other like products or services in the market.

- Word (character or stylized); Logo; Slogan; Product or packaging design; Sound; Color
- Protection for consumers, with substantial benefit to businesses.
- Common law & federal protection
- Prevention of unfair competition

Protection of Company Assets: ® Trademarks

REMEMBER: trademarks indicate the source of goods and services

® = federally registered trademark

TM = just an indication of a claim of trademark

SM = just an indication of a claim of service mark

If you see these marks, take notice.

Protection of Company Assets: © Copyrights

- ✓ Artistic works (paintings, drawings, sculptures, graphic design, pottery, **jewelry**, etc.)
- ✓ Literary works (fiction, nonfiction, poetry, computer programs, etc.)
- ✓ Musical and dramatic works
- ✓ Audiovisual works (motion pictures, multimedia works)
- ✓ Sound recordings
- ✓ Architectural works

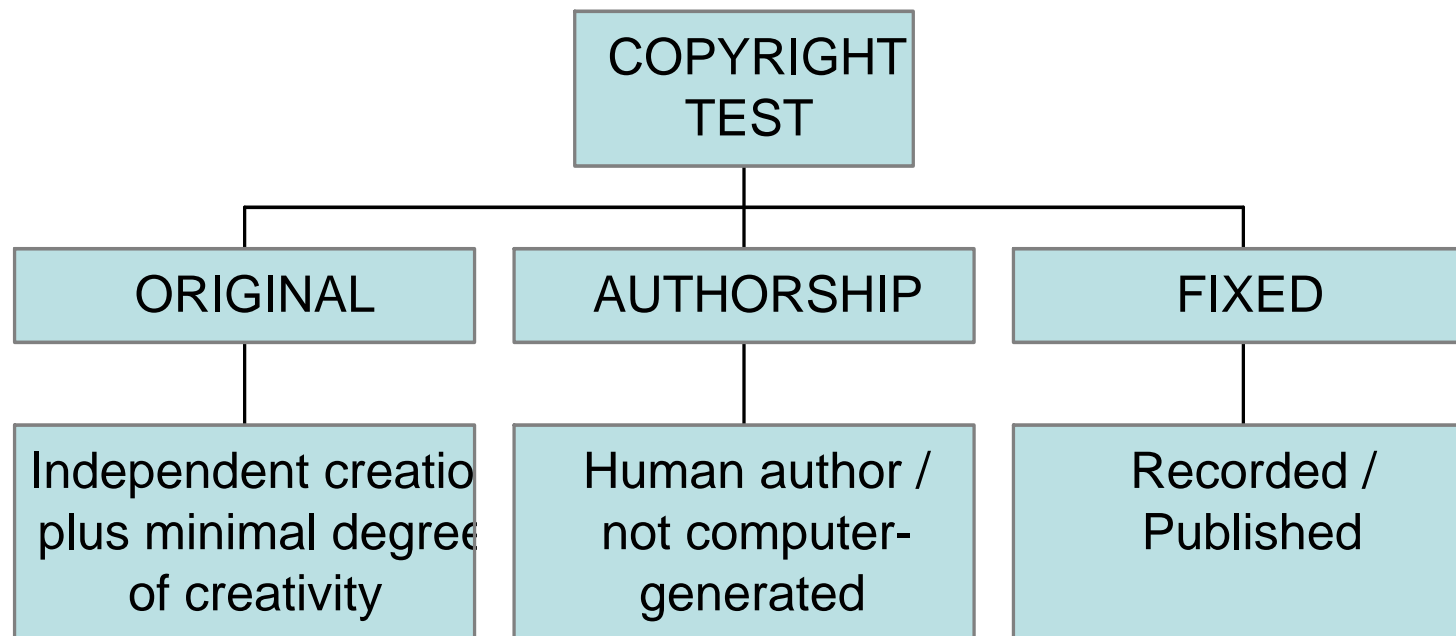
Protection of Company Assets: © Copyrights

What is NOT Copyrightable?

- Discoveries, methods, processes
- Useful articles (furniture, clothing, tools)
Exceptions: architectural work, vessel hull designs
- Ideas or Concepts
- Titles, names, slogans
- Familiar symbols, shapes, colors, lettering
- Subject matter of a photograph

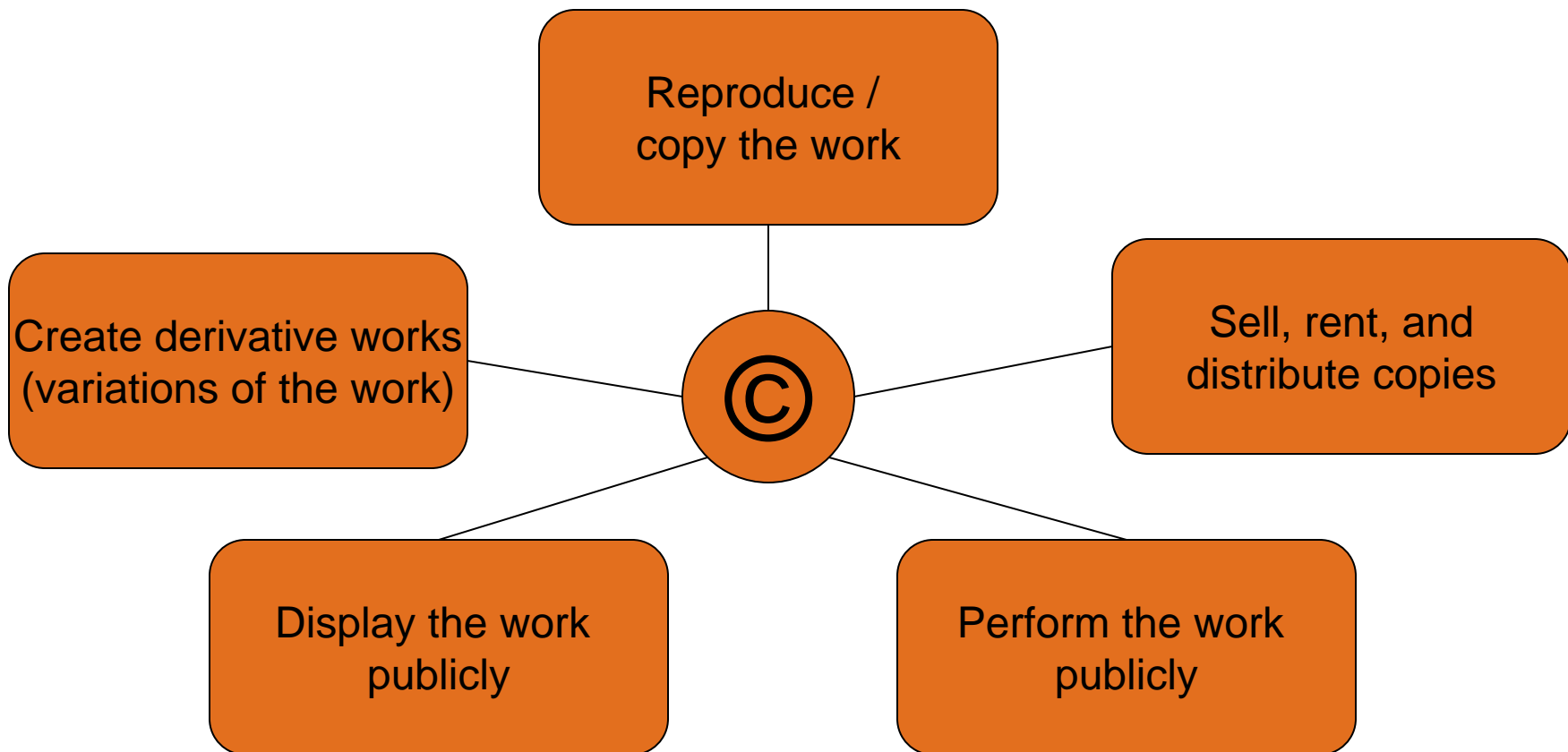
Protection of Company Assets: © Copyrights

“original works of authorship fixed in any tangible medium”



Protection of Company Assets: © Copyrights

It provides the following **BUNDLE OF RIGHTS**:



Protection of Company Assets: © Copyrights

Who owns it?

1. The author
2. If the author is an employee, the employer (“work for hire” doctrine)
3. If the author is a freelancer, generally* the freelancer owns it (unless a written contract states otherwise)
4. If joint authors, the authors jointly own it
5. If a collection of works, generally* separate authors and ownership

*Exceptions apply!

Protection of Company Assets: © Copyrights

How long does it last?

For works created after January 1, 1978, life of the author + 70 years

For works for hire, 95 years from first publication or 120 years from creation (whichever is shorter)

Renewal is also possible.

Protection of Company Assets: © Copyrights

When does it attach?

Immediately!

Copyright protection is automatic upon the creation of a work.

... But, if you want it REGISTERED, then you will need to file an application with the U.S. Copyright Office.

Protection of Company Assets: © Copyrights

What notice is required?

Nothing, although it is good practice to use the following:

© [Year of creation] [Name of author]

Ex: © 2010 CHELSEA FOURNIER, ALL RIGHTS RESERVED

Protection of Company Assets: © Copyrights

Registration With US Copyright Office

NOT required, so why do it?

1. You'll need it if you are going to sue someone for infringing your copyright (rare)
2. It has advantages in business dealings (financing, licensing, assignment) about the copyright

Protection of Company Assets: © Copyrights

HOW do I register my copyright(s)?

1. Complete the right form (Form VA for visual arts, for example) -- see <http://www.copyright.gov/forms>
2. Prepare a copy of your work, called a “deposit” -- see Circular 7d at <http://www.copyright.gov/circs/circ07d.html>
3. Pay the application fee (\$35 for online filing)

Protection of Company Assets: © Copyrights

Fair Use Doctrine

Under the fair use doctrine, you may use limited portions of a copyrighted work for purposes of commentary, criticism, news, teaching and research. The questions examined:

1. Is the work for commercial purposes or for nonprofit of educational purposes?
2. What is the nature of the copyrighted work? (the more creative, the more protection)
3. How substantial is the use of the copyrighted work?
4. What is the impact on the market for and value of the copyrighted work?

Protection of Company Assets: Undeveloped Ideas

- Ideas are generally not property
- If an idea is:
 - a) concrete; and
 - b) novel

it may be protectable by express contract. **BUT REMEMBER, you CANNOT copyright undeveloped ideas.**

Protection of Company Assets: Undeveloped Ideas

Protect As Best You Can

- Be careful who you share idea with
- Use a copyright notice, or confidential watermark
- Register completed works and drafts with Copyright Office
- Keep careful records
- Use express or implied contracts with third parties
***if you make a pitch, make your expectation of confidentiality clear; send confirming letter

Protection of Company Assets: Contracts

- Non-Disclosure Agreements & Confidentiality Agreements
- Work for Hire Agreements
- Non-Competition Agreements
- Work Orders & Invoices

Business Relationships

- Employees
 - Do you comply with state and federal requirements as an employer?
- Independent Contractors
 - If the contractor is creating or contributing to copyrightable designs – Work for Hire Agreements or Assignment Agreement may be necessary.
 - Whenever a third party is adding to a piece of jewelry, you want to assess whether it affects the chain of title of ownership in the design and end product.
- Third Party Copyright Holders
 - Does your end product use elements or designs that are owned by another? Do you need to seek licensing rights or permission?

Business Relationships

- Suppliers – your supply chain needs to be tightly connected and contracts integrated
- Vendors – terms of payment, obligations of proper display, and accounting can be issues when managing a number of vendor accounts.
- Landlord – owner of your retail or studio space
- Investors/Creditors – As your business grows, if you need capital, do you want it to come from investors or creditors?

Ancillary Issues Specific to Jewelry Industry

- FTC Labeling and Advertising Requirements
- Counterfeiting
- Use of Designer's Name as Brand