

COPYRIGHT BASICS

By Vinca Liane Jarrett

When an artist finishes a work, whether it be a screenplay or treatment, recorded or scored music, graphic set designs or the film itself, long before you preview it to potential buyers or colleagues for comment, it is time to copyright your prized possession. This article will give you some tips on how to protect your work and yourself from future battles in and out of court, and more importantly, future heartache.

- (1) **What should I copyright?** Your original screenplays, treatments, short stories, novels, musical compositions, original musical recordings, architectural set designs, film, costume designs, computer software. A copyright applies to any original work, but not to ideas, facts, systems or methods of operation. You cannot copyright the name of your screenplay, song, band or movie. You can, however, trademark certain names that are not either in use or are not generically recognized already. You cannot copyright a rewrite of someone else's work. For example, if your writers group gives you great new dialogue and scenes to put in your screenplay, and someone even does a draft for you, that person cannot copyright the rewrite of your work. You and you alone are the original author with exclusive copyright in the work, and therefore its uses. This does not mean that if others substantially contribute to the work that they don't have rights (usually if they've secured such rights in writing under contract). But they do not have copyright ownership. Only you do. If you license or sell some of those rights, i.e., you option your script to a producer, others may have specific abilities to use your work in a particular fashion that you've authorized. If another writer drafts your script, they may have certain rights under union rules such as Writers Guild of America that entitles them to some form of compensation. But the ownership remains with the creator of the work but for any licensing agreements you may enter in an effort to profit from that work. Finally, you cannot copyright a work you've created for someone else. This is called "a work for hire", and there are strict rules and extensive case law defining when an original work you've taken the lead on is not yours because someone else hired you (and paid you) to create it. When someone asks you to write music for their movie, make sure your agreement states that you are the owner of the copyright, and that you are licensing your creation to the producers for use in that film (and certain other uses such as putting it on a c.d. compilation). Also make sure that all such agreements clearly state that the work is *not* a work for hire.
- (2) **Do I need a lawyer?** To copyright your piece, a one to three page form is necessary to be filled out. It is straightforward. It asks for information such as your name, address and how you can be contacted. It asks for a simple description of the work. There are different forms for different types of work.

Identifying the correct form can be a headache, but the answers are easily obtained by phone or fax directly from the U.S. Copyright office in Washington. Generally I tell clients that my time is expensive and they should file the copyright application themselves. If they wish to put my name down as representative for future notice, that's o.k. If they wish for me to ultimately keep copies of the application and anything received from the Copyright office, I can do that too. If they want me to spend a half-hour reviewing the application once they've filled it out, I can do that for billable hours relatively cheaply and for the small piece of mind they might get. But ultimately, unless you're completely at your wits end in making out application forms, do it yourself. The time to bring in an attorney is the minute you get wind that someone is using your copyrighted work without permission. Don't wait. Run to your lawyer and have immediate action taken, including letters, phone calls, injunctions and civil actions brought against the offending party. Do not take this aspect on yourself, because chances are you'll get yourself in deep waters and be eating the consequences of your own rash actions as you tread water back to shore. When faced with anyone using your work without your express, written permission, call a lawyer.

- (3) **When do I file the application?** This is the most frequently asked question, especially of writers who are still doing multiple drafts and know their work will change, if not in concept, certainly in words and length. Here's my rule of thumb as a screenwriter and novelist myself: Copyright your work *before* you show it to anyone other than your mother, significant other and best friend (and make sure you really know they're your best friend). Don't worry about the work changing over time. If it changes substantially, then you can refile as a modified work anyway (note the fee is still \$30). But don't go to that scriptwriter's workshop and show off your achievement to teacher and class until you've copyrighted the completed draft. Don't give out your c.d.'s of your recorded music until it's been copyrighted. Don't send in the plans for your fabulous costumes until you've copyrighted them.
- (4) **When does my work become copyrighted?** This is so obvious, and yet so well concealed, that it confuses the heck out of everyone. The minute you have completed an original work of authorship, including, but not limited to, literary, dramatic, musical works, paintings, poetry, novels, movies, songs, computer software and architecture, your work becomes copyrighted, regardless of whether you've sent it into the Copyright Office. However, until you file the application, you do not have any rights in law to file a civil action in Federal District Court against an appropriator. Further, if you're about to "publish" your work, you must send in the application within 90 days of publication to receive protection. Publication generally takes place on the date on which copies of the work are first made available to the public for profit. According to the Copyright statute, "Publication is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease or lending...A public performance or display of a work does not of itself constitute publication." Thus, if you have a reading of your original screenplay, and do not charge members of the public to

attend, the work remains unpublished. If you use your recently recorded music at a party to entertain people, and no money is earned (and you're not yet selling the c.d.s of this music), you probably have not published yet.

- (5) **Once I send in my application form, can't anyone get a copy of my work?** No. No one can request a work, published or unpublished, from the Copyright Office without the express written authorization from the author, or a statement of litigation in the case of existing legal suit. The Library of Congress holds onto your work and keeps a record of its receipt. Within 8 months of filing you'll even receive an official copyright certification number, which you can choose to affix to your work if you so choose. If you lose your application or even your work, you can request a copy for a fee.
- (6) **I heard I could protect my work by just sending it in to Writers Guild of America?** No. If you're a member of WGA or some other trade organization that offers registration of a work, then by all means feel free to file with them. It may get you benefits such as mediation for disputes, that the Copyright Office does not offer. However, in order to be entitled to full federal law protection, including the ability to file a civil action, you must have copyrighted your work accordingly with the Copyright Office. There are no exceptions to this rule.
- (7) **How long does my copyright last and will it apply internationally too?** The Copyright Act was recently amended to include The Sonny Bono Copyright Extension Act, signed into law on October 27, 1998. For any work created after January 1, 1978, the copyright lasts for the lifetime of the author plus an additional 70 years. For works filed under a pseudonym, the time period is 95 years from the date of first publication or 120 years from its creation, whichever expires first. The same applies for works created before January 1, 1978, except that in no case will such copyright expire before December 31, 2002. Your copyright is good in more than 100 countries outside the United States with which a treaty is in place. If you plan to distribute your film or music internationally, you should obtain the list of countries from the Copyright Office first. Most non-U.S. citizens can register their works here as well, and will receive the same rights and protection as long as all terms and conditions are met.
- (8) **Ok, now I get it, so how do I copyright my work?** Go to the Library of Congress' web site at <http://www.loc.gov/copyright/> and download the application forms you need. You will need an adobe web browser to do this, but you can get this for free from the website. Or write to the Copyright Office, Library of Congress, 101 Independence Avenue, S.E., Washington, D.C. 20559-6000. Or call to order application forms at (202) 707-9100. To ask general questions about what form you'll need, call during business hours to (202) 707-3000. You will need to file one original copy of your work with the application form with a check for \$30 made out to the Register of Copyrights for *unpublished* works. The fee is the same. If your work is published, you must file two original copies of the completed work. You will not get your copies back. They are now owned by the Library of Congress. I like to place on the cover of my unpublished works the following words as

recommended by the Copyright Office: "Unpublished Work Copyright 199_" and directly underneath that my name. You do not have to copyright the work under your real name. You can use a pseudonym, but you must indicate this on the application form. You may not substitute computer diskettes for a printed version. Generally the PA forms are used for written works such as musical scores, lyrics and screenplays. The SR forms are used for registering performances and productions such as movies and c.d.s of music. Because it takes so long to get the official certificate, you should always file your application by certified mail, return receipt requested, and keep the receipt in a secure place (or give it to your lawyer). If you're preparing to file more than one unpublished work, you may do so as a collection on one application. I recommend using the "Continuation Sheets" to list each and every work. But don't use this money-saving technique to delay your filing or procrastinate moving a particular project forward. You may not file as a collection your published material, unless your works originally appeared as a collection when first published.

For more information on copyright do's and don'ts, contact the Copyright Office or your attorney, or you may contact the author of this article at (617) 821-6772. None of the material in this article is intended as legal advice, and if you require such legal consultation on a particular project or work, please contact an attorney. Vinca Jarrett is an attorney of counsel to the firm of Shames and Litwin, a full service law firm with foremost experience in the field of entertainment, including film, music and television. She is also the owner and principal of the script consulting company SKRIPTease, which specializes in screenplay drafting, editing and consulting on feature and television projects both on spec and in production. For more information on Skriptease, please contact Vinca at Skriptease@aol.com.