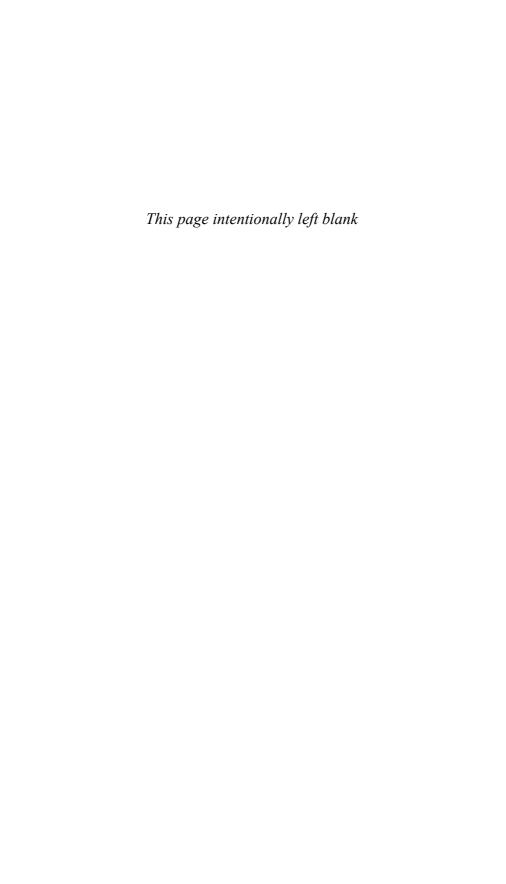
AN ASSOCIATE'S GUIDE TO THE PRACTICE OF COPYRIGHT LAW

Meaghan Hemmings Kent Joshua J. Kaufman

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Contents

ABOUT THE AUTHORS	
ACKNOWLEDGMENTS	xv
CHAPTER 1: Brief Introduction	1
I. Copyright Basics	3
A. A Copyright Is a Bundle of Exclusive Rights	3
B. The Law of Copyright Exists in Statutory and Case Law	4
C. Copyrights Protect Original Works of Authorship	7
D. Only the "Expression" of an Original Work Is Copyrightable	8
E. A "Derivative" or "Compilation" of Copyrightable Works Is Itself Copyrightable	8
F. Copyright Protection Exists with Creation	9
G. Registration Enhances Copyright Protection and Remedies	10
H. Registration Is a Prerequisite to Copyright Litigation	10
I. Copyrights Are Usually Owned by the Author	11
 J. Under the "Work for Hire" Doctrine, the Employer or Commissioner Owns the Copyright 	11
K. When the Author Cannot Be Located or Identified,	
the Work Is Called an "Orphan Work"	13
L. Copyright Protection Lasts for Varying Amounts of Time	14
M. "Publication" Is a Central Event for a Copyrighted Work	15
CHAPTER 2: Copyright Registration and Notice	19
I. Copyright Registrations: Explaining the Benefits to a Client	21
A. The Cost of Registration Is Low	21
B. The Benefits of Early Registration Are Significant	23
C. Registration Is Required Before Litigation	24
D. Registration Allows Recordation with U.S. Customs	25
II. Copyright Registration: The Guidelines	25
III. Copyright Registration: The Application	25
A. The Forms Vary Depending on the Work	25
 B. The Deposit Material Requirements Vary Depending on the Type of Work 	26
C. The Fees Vary Depending on the Method of Registration	28
IV. Copyright Registration: The Method	28

vi Contents

V. Copyright Registration: Completing the Application	30
A. The Work Being Registered	30
1. 1a: Work Being Registered	30
2. 1b: Title of the Work	31
3. 1c: Serial Issues	31
4. 1d: Previous or Alternative Titles	31
5. 1e: Year of Completion	31
6. 1f: Date of Publication	31
7. 1g: ISBN	32
8. 1h: Nation of Publication	32
9. 1i: Published as a Contribution in a Larger Work	32
10. 1j: More Regarding Serial Issues	32
11. 1k: Preregistered Works	32
B. Author	33
1. 2a: Personal Name/2b: Organization Name	33
2. 2c: Doing Business As	33
3. 2d: Year of Birth/2e: Year of Death	33
4. 2f: Citizenship, Domicile	33
5. 2g: Author's Contribution	33
6. 2h: What the Author Created	34
C. Claimant	34
1. 3a: Personal Name/3b: Organization Name	34
2. 3c: Doing Business As	34
3. 3d: Address	34
4. 3e: Where Claimant Is Not an Author	34
D. Limitation of Copyright Claim	34
1. 4a: Material Excluded from the Claim	35
2. 4b: Previous Registrations	35
3. 4c: New Materials Included in the Claim	36
E. Rights and Permissions Contact	36
F. Correspondence Contact	37
G. Registration Certificate Contact	37
H. Certification	37
VI. Copyright Registration of Computer Programs	37
VII. Expediting Registration	40
VIII. Preregistration	41
IX. After the Registration Certificate Issues	43
X. Copyright Notice Should Be Included on All Works	43
A. A Copyright Notice Includes Three Elements	44
CHAPTER 3: Copyright Transfer: Licenses and Assignments	47
I. Ownership of Copyrights	48
II. Copyright Transfer	48
A. Assignments	49
B. Licenses	49

30

C. Ownership of the Work Is Not the Same as Ownership	
of the Copyright	50
D. An Effective Transfer Requires Two Main Elements	50
E. A Nonexclusive License Is Not Technically a "Transfer"	51
III. A Transfer Can Be Recorded with the Copyright Office	52
A. Effecting a Recordation	52
B. Advantages of Recordation	53
IV. A Transfer May Be Terminated to Recapture the Renewal Period	54
V. Drafting Agreements	55
A. Work for Hire Agreement	55
B. Assignment	56
C. Exclusive License	57
D. Nonexclusive License	59
VI. Licensing in Specific Fields	60
A. Music Licensing	60
1. Obtaining the Rights	60
2. Rates	62
B. Art Licensing	63
C. Book Licensing	65
1. Obtaining Permission to Use a Book or Portions of a Book	65
2. Publication Agreements and Book Deals	67
D. Licenses in Educational Settings	69
E. Licensing in Religious Settings	72
VII. Use of a Person's Image—The Right of Publicity	72
CHAPTER 4: Digital Millennium Copyright Act (DMCA)	
Take-Down Notices	75
I. Service Provider Protection through the Safe Harbor	76
II. Drafting the Take-Down Notice	77
A. Determine the Designated Agent	77
B. Required Elements of the Take-Down Notice	77
III. When to Use This Alternative	78
IV. There Are Negative Implications for Those Who Abuse the Process	79
V. How to React When a Client's Materials Have Been	73
Subject to a Take-Down Notice	79
A. Drafting the Counter Notice	80
VI. Preventing a DMCA Take-Down Notice	81
VII. Ensuring Compliance with the DMCA if Your Client Is a	
Service Provider	81
CHAPTER 5: Cease and Desist Letters	85
I. The Pros and Cons of a Cease and Desist Letter	86
A. The Cost of a Cease and Desist Letter Is Lower	
Than Litigation	86

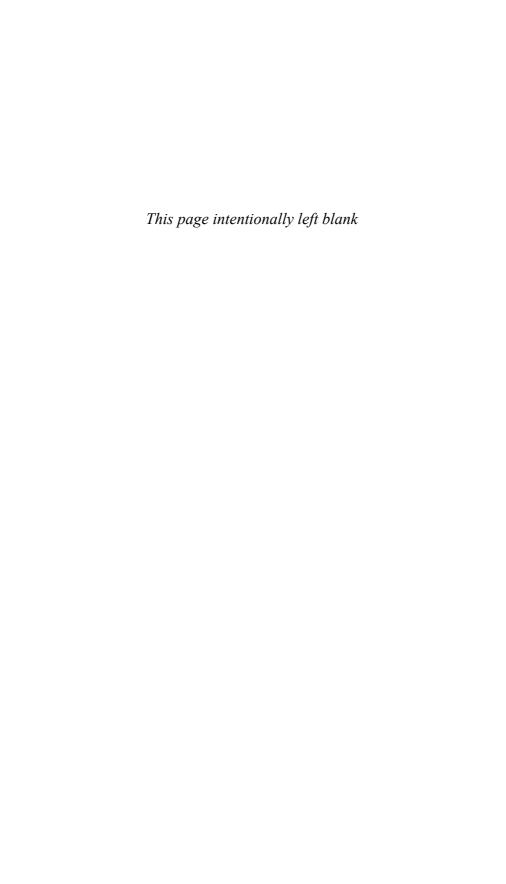
В.	Cease and Desist Letters Can Garner a Speedier Result	
	Than Litigation	87
C.	Cease and Desist Letters Lack Teeth	87
D.	. Cease and Desist Letters Can Instigate Litigation that	
	Your Client May Not Be Prepared For	87
	eighing the Pros and Cons	89
	onsider Filing a Complaint Before Sending a Cease and	
	esist Letter	89
	esearch to Conduct Before Sending a Cease and esist Letter	91
	. Verify that the Work Is Copyrightable	91
	Verify the Copyright Ownership	92
	Question Any Licensing History	92
	. Consider the Accused Infringer's Potential Defenses	93
	Evaluate Registration	93
	Make Sure There Is an Infringement	93
	. Research the Extent of the Infringement	94
	. Research the Recipient	94
	ne Potential Outcomes and Repercussions	94
	rafting the Letter	95
	. Determining Who Should Receive the Letter	95
	Elements to Include in the Letter	97
	ow to Respond to a Cease and Desist Letter	98
	rovide Your Client with a Litigation Hold Notice	100
	onac roar chert mana Enganom rota notice	
CHAPTER 6: Copyri	ght Litigation	103
I. St	eps to Take Prior to Filing a Claim for Copyright Infringement	107
A.	. Register the Copyright	108
B.	Evaluate Whether There Is a Claim	109
	1. Determine the Ownership of the Copyright	109
	2. Ensure That the Copyright Is Valid	110
	3. Determine Whether You Can Show Copying	111
	a. Access to the Copyrighted Work	111
	b. Substantial Similarity	112
C.	. Consider Problems with Your Case and Any Defenses	115
D.	. Evaluate the Strength of the Infringement Case	115
	1. Consider the Strength of the Copyright	115
	a. Nonprotectable Elements of a Copyrighted Work	115
	b. The Merger Doctrine	115
	c. Thin Copyrights	116
	2. Consider the Strength of the Infringement	117
	a. Comparing the Works for Substantial Similarity	117
	b. Evaluating the Extent of the Infringement	118
E.	Determine and Research the Defendant(s)	119
F.	Consider Where to File	120
G.	. Impose a Litigation Hold	121

		Contents	ix
II.	Drafting, Filing, and Serving a Complaint	122	
•••	A. Venue and Jurisdiction	122	
	Subject Matter Jurisdiction	122	
	Personal Jurisdiction	123	
	3. Venue	124	
	B. Factual Background	125	
	C. Causes of Action	125	
	D. Filing the Complaint and Additional Materials	128	
	1. Civil Cover Sheet	128	
	2. Summons	129	
	Corporate Interest and Financial Interest		
	Disclosure Statement	129	
	4. Copyright Form-AO121	129	
	E. Service	130	
	F. Amending the Complaint	131	
III.	Preliminary Injunctive Relief	131	
	A. Temporary Restraining Orders	131	
	B. Preliminary Injunctions	132	
IV.	When Your Client Receives a Complaint	133	
	A. Service	133	
	B. Insurance Issues	134	
	C. Litigation Hold	136	
	D. Receiving an Amended Complaint	136	
٧.	Initial Dispositive Motions	137	
	A. Motions That Must Be Filed Before Answering	137	
	1. Personal Jurisdiction	137	
	2. Improper Venue	138	
	B. Motions That May Be Filed Before Answering	138	
	C. Subject Matter Jurisdiction Can Be Raised Before		
	Answering or Any Time Thereafter	139	
	D. Timing of Motions and Answers	139	
VI.	Answering, Defenses, Counterclaims	140	
	A. Answering	140	
	B. Affirmative Defenses	142	
	1. Statute of Limitations	143	
	2. Abandonment or Forfeiture of Copyright	144	
	3. The Work Is in the Public Domain	144	
	4. Independent Creation	145	
	5. Fair Use	146	
	6. License or Implied License	147	
	7. Merger Doctrine or Unprotectable Elements	148	
	8. Fraud on the Copyright Office	149	
	9. Unclean Hands	150	
	10. Copyright Misuse	150	
	11. Innocent Intent	150	
	12. Equitable Estoppel	151	

x Contents

	C. Counterclaims and Crossclaims	151
Ή.	Remedies	153
	A. Monetary Damages	153
	B. Costs and Attorneys' Fees	156
	C. Injunctions	156
	D. Destruction of the Infringing Goods	158
III.	Discovery	158
	A. Rule 26 Disclosures	160
	B. Written Discovery	160
	1. Plaintiff's General Requests	161
	2. Defendant's General Requests	163
	3. Interrogatories	164
	a. Creation of the Work	165
	b. Validity	166
	c. Ownership	166
	d. Infringement	167
	e. Damages	168
	f. Defenses	169
	g. General Discovery	170
	h. Counterclaims	170
	4. Requests for Admission	171
	5. Requests for Production of Documents and Things	175
	a. Creation of the Work and Validity	177
	b. Ownership	178
	c. Infringement	178
	d. Damages	180
	e. Defenses	181
	f. General Discovery	181
	g. Counterclaims	182
	C. Confidentiality Agreements/Protective Orders	182
	D. Responding to Written Discovery	182
	1. Interrogatories	183
	2. Requests for Admission	186
	3. Requests for Production of Things and/or Documents	187
	E. Subpoenas	189
	1. Issuing a Subpoena	189
	2. Responding to a Subpoena	192
	F. Depositions	192
	1. Who to Depose	192
	2. When to Take the Depositions	193
	3. Noticing the Deposition	194
	4. Depositions of an Organization	195
	5. Preparing to Take a Deposition	195
	a. Creation of the Work	196
	h Validity	106

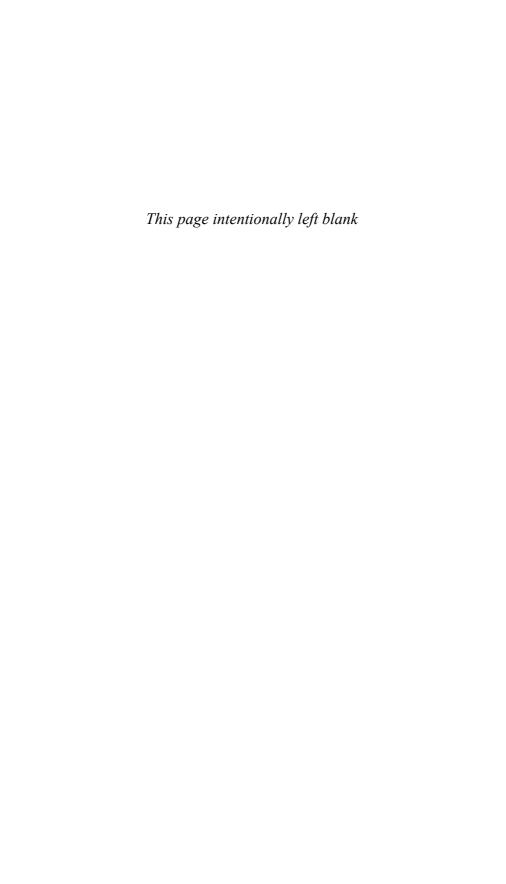
	Contents	хi
c. Ownership	196	
d. Infringement	197	
e. Damages	197	
f. Defenses and Counterclaims	197	
6. Taking a Deposition	198	
7. Defending a Deposition	203	
G. Discovery Disputes	205	
1. Motions to Compel	205	
2. Protective Orders	206	
IX. Experts	207	
A. Types of Experts	207	
B. Locating an Expert	208	
C. Communications with an Expert	210	
D. Expert Reports	211	
E. Deposition of an Expert	212	
F. Motions to Exclude Experts	213	
X. Dispositive Motions	214	
XI. Hearings	216	
XII. Settlement and Mediation	217	
XIII. Pretrial	220	
XIV. Trial and Preparing for Trial	222	
XV. Post-Trial	223	
A. Equitable Relief	223	
B. Relief from Judgment	224	
C. Collecting on a Judgment	225	
D. Recovering Fees and Costs	225	
CHAPTER 7: United States Customs and the International		
Trade Commission	231	
I. U.S. Customs Recordal	232	
A. Recordal	232	
B. Enforcement	234	
II. International Trade Commission	235	
APPENDIX	239	
TABLE OF CASES	307	
INDEX	313	



About the Authors

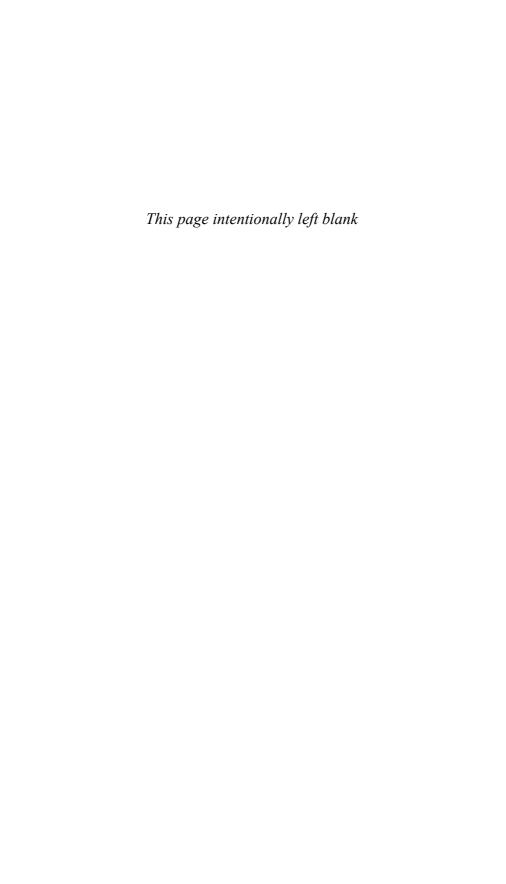
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CHAPTER

1

Brief Introduction

I.	Copyright Basics	3
	A. A Copyright Is a Bundle of Exclusive Rights	3
	B. The Law of Copyright Exists in Statutory and Case Law	4
	C. Copyrights Protect Original Works of Authorship	7
	D. Only the "Expression" of an Original Work Is Copyrightable	8
	E. A "Derivative" or "Compilation" of Copyrightable Works Is	
	Itself Copyrightable	8
	F. Copyright Protection Exists with Creation	9
	G. Registration Enhances Copyright Protection and Remedies	10
	H. Registration Is a Prerequisite to Copyright Litigation	10
	I. Copyrights Are Usually Owned by the Author	11
	J. Under the "Work for Hire" Doctrine, the Employer or	
	Commissioner Owns the Copyright	11
	K. When the Author Cannot Be Located or Identified,	
	the Work Is Called an "Orphan Work"	13
	L. Copyright Protection Lasts for Varying Amounts of Time	14
	M. "Publication" Is a Central Event for a Copyrighted Work	15

This book is a practical guide for lawyers new to the area of copyright law. It covers copyright acquisition, licensing, Digital Millennium Copyright Act notices, federal litigation, and alternatives to litigation.

Although law school provides legal education, it is up to an attorney to learn how to actually *practice* law. This book will speed along the often overwhelming process of learning to *practice*, help you avoid typical pitfalls, teach you some tricks of the practice, point out valuable resources, help you see the big picture, guide conversations with clients, and provide a jumping-off point from which you can become a better, more efficient, more resourceful, and more sought-after attorney. Remember that this book is your first step in practicing copyright law. It is certainly not the only step. There are multivolume treatises and thousands of cases that cover the intricacies of copyright law. This book could not hope to cover all of that material, although it will try to raise most of the issues and point you in the right direction to obtain additional information when you need it.

Each chapter of this book focuses on a different area of copyright law, from copyright acquisition to litigation and alternatives to litigation. While you are certainly welcome to do so, it is not necessary to read this book sequentially. Instead, you can read the sections of this book as you need them. For instance, when you are faced with a DMCA notice, turn to the DMCA chapter; when you are faced with a question on registering a copyright that is also a trade secret, turn to the chapter on copyright registration; when you are faced with searching for an expert, turn to the litigation chapter and section on experts. In this way, you will find the practical tips to save you time and resources in accomplishing the task at hand. The book is designed so that the chapters, and even sections within those chapters, stand alone. For that reason, you may notice that there is some repetition of important points in multiple chapters to ensure that a reader who reads only a certain chapter, or who reads the chapters out of order, will still have the necessary information.

Along with explanations, advice, and tips, throughout the chapters you will find brief examples and samples as well as references to secondary sources, including government sources, online sources, library resources, and treatises. In addition, at the end of the book there is an Appendix with full-length samples referenced within the book, including sample copyright forms, cease and desist letters, licenses, and complaints.

What follows in this introductory chapter is a brief overview of copyrights with a brief description of the elements for copyrights, an explanation of what copyrights protect, and the distinction between registered and unregistered copyrights.

I. Copyright Basics

A. A Copyright Is a Bundle of Exclusive Rights

Once someone acquires a "copyright" in a work, he or she acquires the right to prevent others from using that work. Often referred to as a "bundle of rights," copyright comprises the exclusive rights:

- To reproduce the work
- To make derivative works of the work
- To distribute copies of the work to the public (sale, rental, lease, lending)
- To perform the work publicly
- To display the work publicly

17 U.S.C. § 106 (exclusive rights in copyrighted works).

According to this bundle of rights, only the copyright owner may reproduce or copy the work (a book, CD, or DVD); create a derivative (a movie from a book or a poster from a print), distribute copies of the work (CDs, posters of a painting, software in a company); perform the work publicly (dance choreography perform a copyrighted song); and display the work publicly (broadcast a sporting event, play a copyrighted song while a customer is on hold, post a photograph on a website). Doing any of these things without the copyright owner's permission breaches the copyright owner's right and infringes the copyright.

Practice Tip

Infringement does not occur when the expression is sufficiently different. The test used and discussed in more detail in the litigation chapter (Chapter 6) is whether the infringing work is "substantially similar." You and your clients will hear such tall tales as "As long as the work is only 25 percent similar, then it does not infringe," or "As long as I only copied 10 percent of the lines from the song, it does not infringe." These are old wives' tales and are simply false.

Of course, a copyright owner may allow, through a license, assignment, or other transfer, for others to use the copyrighted work in certain ways. (See Chapter 3 on licensing and assignments). For instance, songwriters and musicians license the right to play their songs on the radio, in gyms, or in elevators; photographers license or assign the rights to display their photographs in magazines; authors license or assign their rights to distributors to