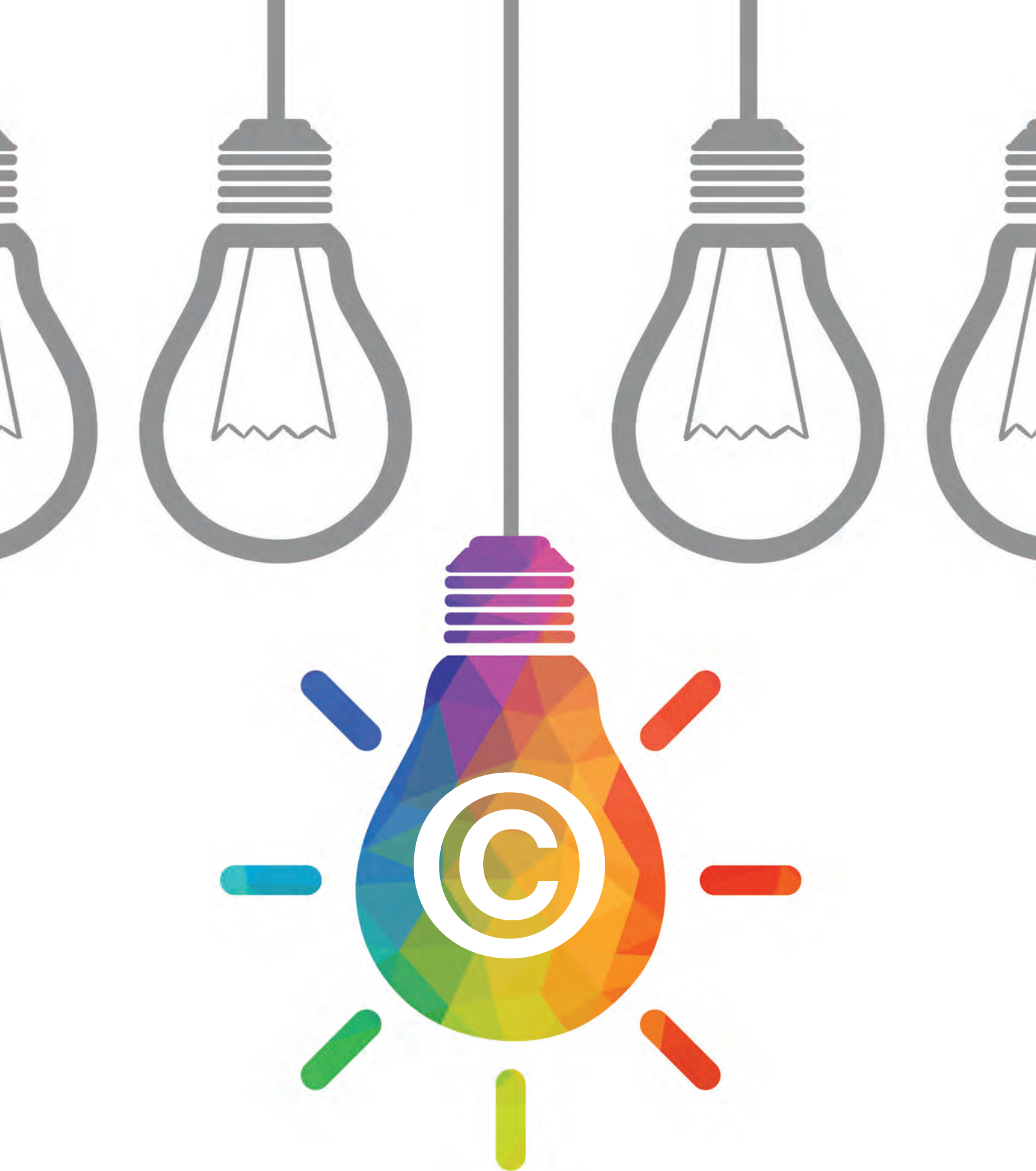


Copyrights for the General Practitioner

COPYRIGHTS ARE LEGAL RIGHTS recognized by law for the protection of intellectual properties broadly falling into the class of artistic works such as music, artwork, literature, photography, and choreography. But the properties protected extend beyond purely artistic works and include computer programs as an extension of literature, sounds as an extension of music, and architecture as an extension of artistic work. The limits of copyright protection become somewhat fuzzy when designs are involved and require delineation between designs dictated by function and designs of a purely artistic nature. For example, clothing is generally considered functional and not protectable by copyright, but non-functional decorative features on the clothing, such as braiding, flowers, and pins, are protectable.

Copyright protects a bundle of rights that are possessed exclusively by the owner. The rights include the right to reproduce the work; to prepare derivative works (extensions of the original); to distribute copies of the work, including by rental or sale; and in the case of

By JOHN C. LINDERMAN AND JUSTIN DURELLI





literary, musical, and dramatic works, to display or perform the work publicly.

The affirmative rights associated with a copyright are subject to more numerous exceptions than the rights granted. Among the exceptions is the Fair Use exception, which gives others the right to copy portions of the copyrighted work for educational, critical commentary, and news reporting. Whether a use is fair use depends on factors such as whether the commercial or non-profit nature of the use, whether demand for the work is impacted, and the extent of the work copied. Other exceptions are available for the blind, for religious services, and for archival and library uses. Many other special provisions of copyright law govern secondary transmissions, satellite transmissions, architectural works, juke boxes, and phonograph records. Therefore, consultation on the law with an attorney for specific uses of copyrighted works is strongly recommended.

THE TERM OF A COPYRIGHT begins with creation and has varied over the years. In 1905, the term of protection was one term of 28 years renewable for a second 28-year term. But since 1978 there has been a single term that has been extended several times and is dependent on renewal earlier rights and the ownership (individual or corporate). For copyrights coming into existence today (2023), if the copyright is held by individual(s), the term lasts for the author's life plus 70 years (if joint, then at the time the last author is deceased). If held by a corporate body or anonymous, the term is 95 years from first publication or 120 years from creation, whichever is shorter. Other situations affect the term of works existing before January 1, 1978, and determination of the term of those copyrights requires tracking the ancestry of the work.

The ownership of a copyright initially vests with the author of the work, or jointly among multiple authors as soon as the work is fixed in a tangible medium of expression. The ownership of a copyright can be assigned, but the assignment must be in writing and signed by the owner in order to be enforceable. A non-exclusive license is not required to be made in writing. Works made by employees in the course of their employment are referred to as works made for hire, and the employer is considered the author and owner of the copyright. Individuals can voluntarily consider a work to be for hire with one of the individuals becoming the owner, but again, to be enforceable the agreement must be in writing.

A few words of caution. An assignment or grant of a license under the copyright by the author, other than a work for hire, is subject to termination after 35 years from the date of grant during a five-year termination period. The termination right is exercisable by the author, the author's widow/widower, or the author's children. The authors of a joint work are tenants in common and, thus, have an independent right to use or license the joint work, but also have a duty to account to one another for profits obtained through exploitation of the joint work absent an agreement to the contrary.

A common transaction involving multiple parties and resulting in a copyrighted work arises when a photographer is hired to photograph an individual or an event. The photographer is the author and owns the copyright for the photos captured, and

holds the right to reproduce the work and other rights of the copyright. The same is true for other types of works. Accordingly, if you engage someone, such as a photographer, to prepare a copyrightable work, such as an advertisement or a contribution to a periodical, there should be clarity as to who will own the copyright or what rights of use you have after the work is completed. In many instances the rights of the hiring party may be understood. A contributor to a periodical will have tacitly or otherwise agreed to reproduction and distribution. But in other circumstances, the limits of use may need to be clearly set out in a writing in advance.

Since January 1978, U.S. copyrights are governed by federal law and enforced through federal courts. However, since 2022, the Copyright Office has operated a Copyright Claims Board in which the author or owner, with or without an attorney, can file a damage claim not to exceed \$30,000.00. The purpose of the Board is to provide a simple and inexpensive procedure to reach a resolution of a copyright dispute since many copyright claims do not warrant a large expenditure of costs and fees. The putative infringer must consent to the proceeding before the Board.

Registration of a copyright is permissive, but brings with it several important advantages when it comes to enforcement, such as eligibility for statutory damages and attorney fees. Registration is obtained by filing an application in the Copyright Office, and is a prerequisite for filing a federal lawsuit for infringement of the copyright. If a registration has been obtained within five years of publication of the work, the copyright enjoys prima facie evidence of validity and the facts stated in the registration, such as authorship.

A FURTHER BENEFIT of the Copyright Law is the provision for giving notice that the work is protected by copyright. A proper copyright notice applied to works in a form visually perceptible directly or with the aid of a machine puts the public on notice and defeats claims of innocent infringement by those who had access to the work. A proper notice includes the word "Copyright," or "Copr," or the symbol ©, plus the year of publication, plus the name or a recognizable pseudonym of the owner.

The copyright law has developed in a form favorable to protecting copyrightable works. The law does not specify the degree of creative expression that is protectible and, because of this, a fairly low level of creativity is regarded sufficient by the courts for affording copyright protection to artistic works. Therefore, the authors of artistic works should be encouraged to take advantage of this form of intellectual property protection. ■

John C. Linderman is of counsel at McCormick Paulding & Huber PLLC in Hartford. He maintains a broad intellectual practice and regularly litigates patent, trademark and copyright matters in the state and federal courts.

Justin Durelli practices at McCormick Paulding & Huber PLLC in Hartford and has patent prosecution experience in the areas of mechanical and electro-mechanical devices, chemical sensors, protective surface coatings, microfluid devices, chemical processes, medical devices, heat transfer systems, and industrial equipment.