

# Pirates Beware

## Multimedia Works Protected by Copyright

By Mark Litwak

An attorney representing a multimedia producer will want to implement safeguards to ensure that his or her client's work is not pirated by others. Protection can be obtained under copyright, trademark, patent and trade secret laws.

Multimedia works are those based on multiple media sources such as video, text, audio, photographs, graphics and animation. They are typically stored in digital form on magnetic or optical media. Some multimedia programs are interactive, meaning that the user can interact and control the direction, pace and content of the program.

A multimedia work will contain computer software to operate the program. This software can be developed by the multimedia creator or licensed from another. Since software is copyrightable matter, 17 U.S.C. Section 101, it cannot be freely borrowed unless it is in the public domain.

The U.S. Copyright Office has taken the position that the screen display of a computer program is protected by the copyright in the program. Thus, one need not register the screen display separately as an audiovisual work. While some decisions have expressed the view that screen images should be separately registered to fully protect them, the Copyright Office announced in June 1988 that the screen display of a computer program is protected as part of the program.

A multimedia work consisting of a series of images could be classified for copyright purposes as either a motion picture (if the images are moving) or an audiovisual work. Video games are considered audiovisual works. A virtual reality display might be considered a motion picture.

Although copyright registration is not required, it is desirable. Registration for U.S. authors is necessary before instituting an infringement action and only authors with registered works can recover statutory damages and attorney fees. While a copyright notice, name of

author and the year of publication became optional after March 1, 1989, placing a notice on all work is recommended. The notice will prevent infringers from claiming they did not know the work was copyrighted. The amount of damages recoverable from innocent infringers is less than that from willful infringers.

A multimedia work may be registered with one application or the elements may be registered separately. Individual registrations are required if any element is published separately or the copyright to various elements are held by different persons.

The elements of the multimedia work will determine which registration form is appropriate. For example, Form PA should be used if the work doesn't contain an audiovisual element but contains an audiotape or disk in which sound recording authorship is claimed. Form TX is used if the work is comprised solely of text. (More information about registration forms is presented later in this discussion.)

To prevail in a copyright infringement suit, one must prove ownership of the copyright in question and that a protected expression was copied. Copying is usually proven by circumstantial evidence since copyright infringers generally operate out of the view of witnesses. The fact that the defendant had access to the original work and the fact that works are substantially similar can be used as evidence of copying.

Treatments and scripts for multimedia works also may be registered with the Writers Guild of America. Registration is evidence of the completion date of the registered material. In a plagiarism dispute, a key issue is which party created the work and which party copied the other. The party who can prove he or she created the work first is presumably the creator; the other is the copier.

Thus, registration creates key evidence that may help a writer protect his work. If a work is registered with the U.S. Copyright Office, that registration is evidence of authorship; so, registration with the Writers Guild is less important. But one advantage of Writers Guild registration is that the deposited work is sequestered and is not available to the public. Writers Guild registration lasts five years and may be renewed for an additional five-year period. Finally, copyright registration grants the author timely additional protections such as statutory damages and attorney fees.

For registration of multimedia works

with the U.S. Copyright Office, selection of the appropriate form depends on the elements of the multimedia work. Note the guide below:

Form PA should be used if the work contains an audiovisual element, such as a slide, film or videotape, regardless of whether there are any sounds.

Form SR should be used if the work does not contain an audiovisual element, but contains an audiotape or a disk in which sound-recording authorship is claimed.

Form TX is appropriate if the work contains only text, such as a computer program that produces a textual screen display.

All copyrightable elements of a multimedia work may be registered with one application, deposit and fee if the elements are not published, or, if published, they are published as a single unit; and the copyright claimant is the same for each element (that is, one person or company owns all the elements).

Elements also may be separately registered. Separate registration is required when any element is published separately or when there are different copyright owners of the elements.

For multimedia works, the copyright notice should contain three elements:

- The symbol © or the word "copyright" or the abbreviation "copr." One of the symbols should be placed on copies of the work and be visually perceptible, either with the naked eye or with the use of a machine. The symbol (p) should be placed on phonorecords of sound recordings.

- The year of the first publication of the work.

- The name of the copyright owner.

Although a separate notice may be placed on each element of a multimedia work, one notice is sufficient. Where a sound recording is included, however, the (p) notice should be placed on the phonorecord.

**Mark Litwak**, an entertainment attorney in Beverly Hills, has written several books, the latest of which, "Litwak's Multimedia Producer's Handbook," is scheduled to be released this summer.

### Submissions

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