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SINCE OUR UNIQUE PASSIONS ARE ALWAYS EMBEDDED IN OUR WORK AND OUR STYLE, understanding copyright law in the U.S. allows us to master our intellectual property rights as employees in America as well as internationally.

Understanding Us copyright law

COPYRIGHT PROTECTION

Under U.S. copyright law, copyright protection attaches the minute the work is fixed. Unlike other areas of U.S. intellectual property, there is no need to take any other affirmative step to protect the work. In the U.S., if you sit down with a blank piece of paper and write an article for *The Work Style Magazine*, as soon as your pen leaves the paper, you have copyright protection in the work. It is necessary, however, to have federal copyright registration in order to sue someone for infringing your copyright in the U.S.

LENGTH OF PROTECTION

In general, if the work was created after January 1, 1978, the copyright in a work lasts for the life of the author plus 70 years after the author's death. If you are dealing with a joint work, the term of copyright is for the life of the last surviving author plus 70 years after the death of the last surviving author. For works made for hire, the copyright lasts for 95 years from publication, or 120 from creation, whichever comes first.

WORKS MADE FOR HIRE

U.S. copyright law's work made for hire doctrine provides that the employer and not the employee/author is the author of a work prepared by an employee within the scope of her employment. Because the employer is considered the author of the work, the employer owns the copyright in the work!

What can the employee do to avoid this predicament? At the time of employment, the employee can artfully negotiate her employment agreement. At its most basic level, the employment agreement must

define and maintain the employee's rights in any intellectual property created while employed at the company! Of course, this will be quite daunting considering the current state of our global economy. The employee could also try to negotiate an agreement whereby employer and employee jointly share ownership in any intellectual property created by the employee while employed by the company. Such an agreement would

allow the employee to at least retain some rights in the work while sharing in any profits. Finally, if the employer is unwilling to grant the employee any rights in the work produced within the scope of employment, the employee could argue for an increase in pay or responsibility. Unfortunately, considering the current state of our economy, employers again have the edge!

CAN STYLE, FABRIC AND FASHION BE COPYRIGHTED?

Now that we have down the basics of copyright law in the U.S., can style, fabric and fashion be protected by copyright? As always, the lawyerly answer is: it depends! And it depends on whether the work as a whole is a useful article. The useful article doctrine provides that there will only be protection for design features if they can be identified separately and exist independently of their utilitarian aspects. Because clothing, in general, is considered "inherently functional," it is not given copyright protection in the U.S. However, under the useful article doctrine, the separable aesthetic and non-utilitarian aspects of the clothing or fabric is provided copyright protection in the U.S. One famous example of the useful article doctrine is a second circuit case, *Kieselstein-Cord v. Accessories by Pearl, Inc.* (1980). In this case, an artist created a jeweled belt buckle and the issue was whether there was copyright protection for the jeweled belt buckle. Clearly, a belt buckle is utilitarian – it keeps your pants up! The court concluded, however, that the belt buckle was copyrightable material because it thought that the aesthetic aspects of the belt buckle were conceptually separate from its utilitarian function. In other words, the court thought that some people would look at that belt buckle and not even see the belt buckle but rather see an abstract work of art – a piece of jeweled sculpture. ●

