

# GET TO KNOW THE DIFFERENCE

## Trademark vs. Copyright

Copyrights and trademarks are both forms of **intellectual property**, which is a mental creation that has value to a business.

### Official Terminology in the US



#### COPYRIGHT

"A copyright protects original works of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture. The duration of copyright protection depends on several factors."



#### TRADEMARK

"A trademark is a word, phrase, symbol, and/or design that identifies and distinguishes the source of the goods of one party from those of others. ... Unlike patents and copyrights, trademarks do not expire after a set term of years. Trademark rights come from actual "use."

Source: U.S. Copyright Office and the U.S. Patent and Trademark office

## COMPARE AT A GLANCE

	TRADEMARK	COPYRIGHT
Symbols	<ul style="list-style-type: none"> <li>• TM (Unregistered) /</li> <li>• R (Registered)</li> </ul>	<ul style="list-style-type: none"> <li>• C (Current)</li> <li>• P (Sound Recordings)</li> </ul>
Application	Word, phrase, symbol, design	Writings, music, works of art, performances
Enforcement	Trademark Holder or Attorney	Copyright Holder or Attorney
Duration	10 year increments for as long as the TM is being used. After the first 5 years of registration, an affidavit of use is required to retain registration.	Life of author, plus 70 years thereafter. If the author is not a living person but a legal entity, then it is either 90 years after publication or 120 years after creation, whichever is shorter.
Resolution	Prevents others from using confusingly similar in the same or similar class marks but not from selling the same goods or services.	Gives owners exclusive rights to reproduce, distribute, perform, sell, transit, import, and export works
Protection	Common law or federal	Federal

## 5 FACTS TO KNOW

1

Copyright is automatic regardless of use, while trademark requires use in commerce and distinctiveness.

2

Tests for infringement are vastly different.

3

While both trademarks and copyrights get protections through use/creation, registration with the respective federal offices confers stronger rights that are unavailable without registration.

4

Online infringement of copyright can often be handled under the Digital Millennium Copyright Act (DMCA).

5

Trademark is protected by both common law and federal laws, while copyright laws are federal only.