KEAN MILLER'S TOP TIPS FOR COPYRIGHT

1. You obtain copyright protection in a work simply by creating it. However, to sue for copyright infringement, you must register the work with the Copyright Office. The timing of your registration can greatly impact your rights against a potential infringer.

2. If a work is registered before the alleged infringement, the copyright owner is entitled to actual damages plus any additional profits of the infringer or statutory damages. Statutory damages can range from $750 to $30,000 per work infringed, and can be increased up to $150,000 per work infringed if the infringement is willful. Statutory damages are the reason you may have heard of astronomical awards for downloading and sharing music.

3. Courts often award attorney fees to a plaintiff who registered the work with the Copyright Office before the infringement began. However, judges in a copyright case can award attorney fees to the prevailing party, and some prevailing defendants have been awarded the recovery of their attorney fees.

4. The Copyright Act has been modified numerous times over the past century. When determining if a work is in the public domain, start by looking at the version of the Act when the work was made and when it was first published. Depending on the Act in effect at the time, you may need additional information, such as the death of the author, to determine if it is in the public domain.

5. The Fair Use Doctrine likely does not forgive your intended infringement of another person's copyright. Courts rarely allow the defense to be used when the infringement took place in a commercial endeavor. If it is related to a business, it is likely a commercial endeavor as far as fair use is concerned. This includes the use of another person's images on your website or in advertising and marketing materials without his permission (i.e., a license). In fact, fair use often does not forgive non-commercial uses either.

6. The Work for Hire Doctrine considers the employer or commissioner of a copyrighted work as the author, not the physical creator. But, the doctrine is much narrower than most people believe. Generally, there are only two ways for a work to be a work made for hire: 1) if it is done by an employee (including common law agency employee) in the course and scope of his employment; or 2) if there is a writing beforehand declaring the work to be a work made for hire and the work is one of nine enumerated types under the Copyright Act of 1976.

7. Copyright assignments must be in writing to be effective. They can, but do not have to be, registered with the Copyright Office.

8. Employers who want to own all copyrights in their employees' work product should impart duties onto their employees to create works on the employer's behalf. These duties should be outlined in a standalone written agreement or employment agreement signed by the employee. It should also couple a duty to assign all works made.

9. If multiple people are going to contribute to a work, determine early on who owns what rights, and put it in writing. The default rules for joint authors grant equal rights, subject to a need to account the others for their share of profits.

10. The creator of certain works of art has certain default rights called moral rights, which include the right of attribution to the work he or she created. That said, it is suggested that any continuing rights of the creator, such as portfolio rights, be expressly covered in any assignment or work for hire agreement.