# COPYRIGHT INFRINGEMENT CHECKLIST

PFEIFFER LAW

## I. WHAT MUST YOU PROVE?

What must you prove to prevail in a copyright infringement action?

1. That you own a valid copyright in the work
2. That the other party wrongfully copied your work
3. That the portion wrongfully copied from your work qualifies as protectable material

Unfortunately, identifying commonalities between the two works is not always enough to prove wrongful copying. So, what do you need to do?

1. Prove that the other party *actually copied* your original work; and
2. Prove that the other party copied a *substantial amount* of your copyrighted material

## II. OWNERSHIP

Do you own a valid copyright in your work?

If you have a registered copyright, the answer to this question is simple: yes. However, if you have not registered your work with the U.S. Copyright Office, your work will still be afforded minimal protection against infringement. Common law copyright protection vests as soon as you have written your script, recorded your song, or created your sculpture. However, copyright protection does not have much bite without a registration: you will not be eligible to receive statutory damages or attorneys' fees, even if you win your case. For this reason, we highly recommend registering your work as soon as possible.

## III. HOW DO YOU PROVE IT?

How do you prove the other party copied your work?

1. Prove that the other party actually copied your original work; AND
2. Prove that the other party copied a substantial amount of your copyrighted material

A. <u>Direct Evidence (Very Unusual)</u>

1. Admissions from the other party that they copied your work
2. Eyewitness statements from a third party confirming the other party copied your work
3. Any identifying features (watermarks) that signify that *their work* is actually *your work*

B. Indirect Evidence (More Common):

1. Exactly the same characteristics exist between the two works *in key areas* of the works. For example:
    a. Identical physical traits in the main characters
    b. Identical plot twists that are carried out in the exact same way
    c. Identical sounds and/or music played over the picture

**OR**

2. The other party had "Access" to your work and that the works are "Substantially Similar"

Access: You do not need to prove that the other party actually saw your work or had a physical copy of it. You only need to show that it is reasonably possible that the other party saw your work. For example:
    a. Your work has become very well known;
    b. You can prove that there is some link between the other party and your work. Maybe you gave a copy of your work to the other party for review or consideration.

Substantial Similarity: Basically, the two works have to have a significant amount of copyright-protected material in common. Things to think about:
    a. How much of your material did the other party copy?
    b. How important is the copied portion to your work?
    c. Does copyright law protect the copied material?

## IV. WHAT MATERIAL IS PROTECTABLE?

U.S. Copyright law protects the expression of original ideas, but not every expression of an original idea is copyrightable. Courts must balance the competing interests involved in rewarding an individual's ingenuity and effort while at the same time permitting further improvements or progress resulting from others' use of the same subject matter.

Here are a few examples of expressions of ideas that are not protected by U.S. Copyright laws:

1. General themes common to a medium or genre
2. Historical events, including documented historical facts or explanatory hypothesis where the actual historical facts are unknown or in dispute
3. Scenes a'faire: sequences of events that necessarily must follow from certain similar plot situations. For example, sequences in a book about police officers which involve criminals, stolen cars, or bank robberies are not protectable

Think about your work in the context of the above information. Do you believe that your situation satisfies these requirements? If so, you might have a good case for copyright infringement.