

From the Desk of

Michael K. Kinney
Managing Partner

Kinney@mkgip.com
Tel. 860-632-7200
Fax 860-632-8269

MKG, LLC
Intellectual Property Law
Centerpoint
306 Industrial Park Road
Suite 206
Middletown, CT 06457-1532
www.mkgip.com

Attorneys at Law
Richard R. Michaud (1963–2012)

Michael K. Kinney*±
Robert L. Rispoli *±
Christine W. Beninati*±

Of Counsel
Raymond D. Thompson*±

± Admitted CT
° Admitted NY
◊ Admitted PA
* Admitted U.S. Patent
& Trademark Office

Copyright - A copyright is a form of protection given by law to authors of literary, dramatic, musical, artistic and other intellectual works. A copyright establishes a form of exclusivity and provides financial incentive and reward to creators. The copyright system benefits the public through the dissemination of information and ideas. The Constitution provides that copyright protection shall be extended to an author's works. In order to be copyrightable., the work must meet the following requirements:

- A. The work must be in a form of a "writing", that is, it must be fixed in some tangible form from which the work can be reproduced; and
- B. The work must be a product of original creative authorship.

The copyright does not protect an idea but only the author's version of the way the idea is expressed. It is no longer necessary but is still a good idea to mark one's work of authorship as being Copyrighted. In addition, it is not necessary to have a copyright registration in order to have ownership in copyright. However, registration is necessary, or having applied for registration and been refused, in order to sue for copyright infringement in federal court. Another reason for applying for copyright registration early on is so that one can be eligible to receive statutory damages. The significance of statutory damages is that it permits an award of special damages in a successful infringement lawsuit and negates the duty of the copyright owner to prove actual damages. Absent agreement to the contrary, copyright vests in the author of the copyrightable work. Accordingly, if a company uses an outside person or agency to create websites, brochures, photographs, logos or the like and does not have an "ownership agreement" in place, copyright inures to the benefit of the creator of the work regardless of who paid for its creation. The "ownership agreement" is typically referred to as a work-for-hire agreement and must be in writing in order for it to be effective. A sample work-for-hire agreement is attached hereto as Appendix A. To be eligible for statutory damages, the application for copyright registration must be filed prior to an infringement taking place or within three months from the publication date of the work. If the infringement occurs prior to the effective date of copyright registration or after the three-month grace period, then the copyright owner will not be entitled to receive statutory damages. The effective date of copyright registration is the date when the Copyright Office receives the complete registration application that consists of the application, fee and deposit copies.

APPENDIX A

Work-for-Hire Agreement

This Work-for-Hire Agreement is made this _____ day of _____, 20____, between _____ (_____) and _____, having its principal place of business at _____.

In consideration of _____ retaining _____ to develop materials related to _____ for _____, it is agreed as follows:

1. **Compensation and Term**

_____ hereby retains _____ and _____ hereby agrees to perform the following services; Consulting services of _____ as required by and development of various materials, forms and artwork related to _____. _____ may at various times perform services at other facilities as required by _____ or at _____ facilities, as directed by _____. _____ will perform the services at various times and for various durations as directed by _____.

_____ will compensate _____ for services rendered at times and rates agreed upon by the parties.

_____ shall provide detailed invoices and shall maintain, and provide, upon request, backup documentation. Unless disputed by either party to this agreement, _____ shall make full payment for services rendered.

This Agreement shall be considered to have commenced on the date stated above, and shall remain in effect until all obligations under this Agreement have been properly completed. Either party to this Agreement may terminate this Agreement with or without cause by providing at least thirty days written notice to the other party.

2. Warranties by _____
_____ represents and warrants to _____ that it has the experience and ability to perform the services required by this Agreement; that it will perform said services in a professional, competent and timely manner; that it has the power to enter into and perform this Agreement; and that its performance of this Agreement shall not infringe upon or violate the rights of any third party or violate any federal, state and municipal laws.

3. Grant
_____ agrees that its work product is produced as a Work for Hire and shall remain the exclusive property of _____. Any rights granted to _____ under this Agreement shall not affect _____'s exclusive ownership of the work product. Any rights to work product produced in the performance of a Work for Hire Agreement, granted to _____ may not be used in any other publications or media, without the written consent of _____.

4. Work for Hire
_____ acknowledges that the services rendered under this Agreement shall be solely as work for hire. _____ shall not enter into any contract or commitment on behalf of _____.
_____ further acknowledges that it is not considered an affiliate or subsidiary of _____, and is not entitled to any _____ employment rights or benefits. It is expressly understood that this undertaking is not a joint venture.

5. Confidentiality
_____ recognizes and acknowledges that this Agreement creates a confidential relationship between _____ and _____ and that information concerning _____'s business affairs, customers, vendors, finances, properties, methods of operation, computer programs, and documentation, and other such information, whether written, oral, or otherwise, is confidential in nature. All such information concerning _____ is hereinafter collectively referred to as "Confidential Information."

6. Non-Disclosure

_____ agrees that, except as directed by _____, it will not at any time during or after the term of this Agreement disclose any Confidential Information to any person whatsoever and that upon the termination of this Agreement, and upon written request, it will turn over to _____ all documents, papers, and other matter in its possession or control that relate to _____.

_____ further agrees to bind its employees and subcontractors to the terms and conditions of this Agreement.

7. Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the State of Connecticut.

8. Entire Agreement and Notice

This Agreement contains the entire understanding of the parties and may not be amended without the specific written consent of both parties. Any notice given under this Agreement shall be sufficient if it is in writing and if sent by certified or registered mail.

IN WITNESS WHEREOF, _____ and _____ have duly executed this Agreement as of the day and year first above written.

Name: _____

Title: _____

Signature: _____

Date: _____

Name: _____

Title: _____

Signature: _____

Date: _____