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# Dunner Law Dicta



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## Dunner Law PLLC

IP Practice specializing in trademark and copyright law; IP counseling, domestic and international protection of IP portfolios; internet and social networking issues; IP audits and strategies relating to IP portfolios; drafting and negotiating IP- and IT-related agreements

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## Why Use Notice of Trademark or Copyright?

Did you ever wonder why a pamphlet someone hands you on the street bears a copyright notice? Or why the logo on your plumber's truck has TM beneath it? What good do these notice symbols do? Do you have to include notices on your written materials or next to your trademarks? When can and should you use notices?

### *Notice Overview*

You do not need notice of copyright (©) or trademark (TM, SM, ®) to establish your respective rights — the law does not require it. Copyright attaches to any work once it is fixed in a tangible medium, regardless of registration with the Copyright Office. When you write a poem on a cocktail napkin, you own the copyright to that poem (assuming it is your original creation). Similarly, you can establish rights in a trademark once you begin offering goods and services in commerce and you use your mark on or in connection with those goods or services (e.g., on product packaging, on delivery vans, or on menus). Like with copyright, you establish rights in a mark regardless of registration with the PTO. While notice symbols are not required under law, there are benefits to using them.

### *Copyright*

Despite its optional nature, proper notice of copyright will bolster your rights in the work in two important ways. First, it puts the public on notice that you are the copyright owner — you are clearly alerting the world that you own the rights to the work. Second, proper notice on a copyrighted work prevents a defendant in an infringement suit from successfully claiming innocent infringement. In other words, the defendant cannot successfully argue that he was unaware that the work bearing proper notice was protected by copyright.

Proper notice of copyright is simple. All that is required is the copyright symbol (you can also use "Copyright" or "Copr."), year of first publication, and the name of the copyright owner. For example: "© 2011 Arthur Author"

For websites, you can include both the first and the current year of publication:  
"© 2004–2011 Arthur Author"

### *Trademarks*

Similarly, you do not need federal registration or notice of trademark to establish your rights. However, registration status and the rights protected in a particular mark determine the symbol used. TM is used for an unregistered trademark and is fixed to marks identifying sources of goods (e.g., "WonkyWidget<sup>TM</sup>"). SM is used for an unregistered service mark and is fixed to marks identifying sources of services (e.g., "Scarf Sandwich Shop<sup>SM</sup>"). You should know that most people use TM as the default symbol for both goods and services. Importantly, there is no harm in defaulting to the TM symbol, so do not worry if you have never heard of SM or if you have not been using it in association with your services. ® is applied only to federally registered marks and not to marks that are the subject of an application pending with the U.S. Patent and Trademark Office (e.g., "Magination Press®").

The primary benefit of the trademark notice, like in copyright, is that it puts the public on notice that you are claiming rights to the mark. Using TM, SM, and ® is an effective way to tell the world that the mark is yours.

### *Conclusion*

Although the use of notice symbols is a somewhat straightforward concept, many businesses do not use the proper notice symbol (e.g., ® as the default symbol whether the mark is registered or not) or they do not use notice symbols at all. Therefore, do not always take another's notice symbol at face value, but do pay attention when you see one, because that tends to mean that the owner takes its intellectual property seriously. As for your own use of notice symbols, you should not hesitate to use them now that you understand their importance.