

Copyright: Reasons to Register

Benefits of Registering Sooner Rather Than Later

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1 Introduction

Most copyright owners are aware that they get a copyright in their works upon the moment of creation. What they may not be aware of is that they may have difficulty protecting that copyright without registration. And many times, early registration not only makes enforcement easier, but also provides a quick and presumptive proof of ownership—which makes monetizing the copyright easier and increases the value of the copyrighted work.

The following list describes in greater detail the benefits of registering your copyrighted work and doing it early.

2 Reasons to Register

- 2.1 **Access to court.** You must register your copyright before you can sue for copyright infringement. 17 USC §411(a).
- 2.2 **More monetary recovery.** If registration is made within three months after publication of the work or before an infringement of the work, statutory damages and attorney's fees will be available. Otherwise, you are limited to actual damages. 17 USC §412.
- 2.3 **Settlement leverage.** Even in instances where you would like to avoid litigation, the

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availability of statutory damages can provide settlement leverage.

- 2.4 **Presumption in your favor.** Registration before or within five years of first publication constitutes prima facie evidence of the validity of the copyright and of the facts stated in the certificate of registration. 17 USC §410.
- 2.5 **International presumptions.** Favorable presumptions from registration also apply internationally in some circumstances; for example, Australia allows reliance on US registration and can be the basis for reciprocity in India.
- 2.6 **Constructive notice.** Registration provides notice of copyright ownership. This makes a defense of innocent infringement by the putative infringer harder to prove.
- 2.7 **Deposit copy for proof.** The deposit copy makes it easier to establish proof of creation, including relevant dates of creation.
- 2.8 **Easier to assign.** Registration makes transfers easier because the acquiring party in a divestiture or other sale usually asks for the registrations.
- 2.9 **Protection at the border.** Registration allows the owner of the copyright to record the registration with the U.S. Customs Service for protection against the importation of infringing copies.
- 2.10 **Easier to license, especially internationally.** Registrations have proven useful for providing proof of ownership in non-U.S. licenses (often to non-U.S. government agencies). Some type of proof is usually needed on an expedited basis in such transactions. In the absence of the registration you will need to find other ways to prove ownership (which usually takes a few days or longer) and you run the risk of losing the license/contract.

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2.11 **Simplify your taxes.** Registrations can also be helpful in providing information concerning ownership and or the nature of your ownership for both state and local tax matters.

3 Conclusion

Access to federal courts is a significant benefit of copyright registration. But it is not the only one. Many advantages flow from early registration that increase the value and enforceability of your copyrighted works.

In addition—depending on your jurisdiction—it might not be enough to file an application to get access to the court. Some federal circuits follow the registration approach, which requires that you not only apply for registration before suing, but that you have a registration certificate. And it is possible that the Supreme Court will resolve this circuit split in favor of the registration approach this year in *Fourth Estate Public Benefit Corp. v. Wall-Street.com LLC*, Case No. 17-571.

The advantages of making the investment in copyright registration is further highlighted by the greater difficulty in securing patent protection for software innovation. It is typically easier to obtain copyright protection for these innovations than patents, and it is significantly less costly. In addition, unlike the growing difficulty in obtaining or enforcing patents, copyright protection has been expanding, including most recently in the clothing and fashion industry.

Ultimately, registration makes business decisions easier by creating more certainty around the value and enforceability of copyrighted assets—which helps copyright owners drive value creation with those assets. And the earlier that registration is done, the greater the benefit of the registration.