

Publication

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Client Alert: U.S. Supreme Court Mandates Copyright Registration to Litigate Infringement Claims

This month, the U.S. Supreme Court highlighted yet another reason to seek copyright registration as soon as possible. In a unanimous decision, the Supreme Court ruled in *Fourth Estate Public Benefit Corp. v. Wall-Street.com* that a copyright owner must actually hold an issued copyright registration before it can initiate litigation to enforce its rights. The Court's decision settles a long-standing split between U.S. Appeals Courts, some of which had previously held that the mere filing of a copyright application was enough to initiate an infringement proceeding in court. Now, a registration must issue before such a proceeding can commence.

Given that the copyright registration process can take several months (and sometimes much longer), early registration is a must for companies and individuals that wish to protect their creative investments. Along with this right of enforcement, a timely-filed copyright registration confers other significant benefits. Under the U.S. Copyright Act, a party can recover statutory damages—without having to prove actual damages—of up to \$150,000 per work infringed. The Act also allows a prevailing party to recover its attorneys' fees, but these benefits are not necessarily available to all plaintiffs. Instead, a plaintiff must earn the right to seek statutory damages and attorneys' fees, and this right is earned by timely obtaining a copyright registration. To be eligible, the copyright application must be filed before the

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infringement begins *or* within three months of the work first being published (released publicly).

For parties without a registration that find themselves dealing with an infringer while still in the three-month grace period, the Copyright Office offers expedited processing. This type of processing is allowed only in compelling circumstances, such as for pending or prospective litigation, customs matters, and contract and publishing deadlines. In such a case, a registration can be expedited through the registration process via the payment of an additional fee (\$800) and the submission of a certified statement explaining why quick review is necessary. Where expedited processing is granted, it can result in a registration in as fast as five business days. Notably, this request can be submitted at any time during an application's review, should circumstances warrant such a request.

Owners of creative works should consider that today, copyright infringement is as simple as a click, a copy, and a paste. Owners must therefore be diligent in protecting their intellectual property rights, and in the copyright realm, the Supreme Court has further emphasized that diligence starts with obtaining a registration early to maximize protection down the road.

Should you have any questions concerning your business's copyright protection efforts, do not hesitate to contact Lee Eulgen, Michael Kelber, Kara Smith or another member of Neal Gerber Eisenberg's Intellectual Property group.